

VOLUME 9B
1990–91 RCW SUPPLEMENT

1989
REVISED CODE OF WASHINGTON

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I. SCOPE OF SUPPLEMENT

Volumes 9A and 9B supplement the 1989 edition of the Revised Code of Washington by adding the following materials:

1. **1990 Laws:** All laws of a general and permanent nature enacted in the 1990 regular session (adjourned sine die March 8, 1990), the 1990 first special session (adjourned April 1, 1990), and the 1990 second special session (adjourned June 5, 1990) of the fifty-first legislature.
2. **1991 Laws:** All laws of a general and permanent nature enacted in the 1991 regular session (adjourned sine die April 28, 1991) and the 1991 first special session (adjourned June 30, 1991) of the fifty-second legislature.
3. Rules of Court adopted between September 1, 1989, and August 31, 1991.
4. Appropriate supplementation of the various tables and general index.

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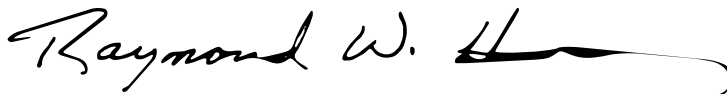
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REVISED CODE OF WASHINGTON
1990-91 Supplement

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CERTIFICATE

This 1990-91 supplement of the 1989 edition of the Revised Code of Washington, published officially by the Statute Law Committee, is, in accordance with RCW 1.08.037, certified to comply with the current specifications of the committee.



**RAYMOND W. HAMAN, Chairman,
STATUTE LAW COMMITTEE**

Title 42
PUBLIC OFFICERS AND AGENCIES

Chapters

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Chapter 42.17

DISCLOSURE—CAMPAIGN FINANCES—
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Basic health plan records: RCW 70.47.150.

42.17.020 Definitions. (1) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

(2) "Ballot proposition" means any "measure" as defined by RCW 29.01.110, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency prior to its circulation for signatures.

(3) "Depository" means a bank designated by a candidate or political committee pursuant to RCW 42.17.050.

(4) "Treasurer" and "deputy treasurer" mean the individuals appointed by a candidate or political committee, pursuant to RCW 42.17.050, to perform the duties specified in that section.

(5) "Candidate" means any individual who seeks election to public office. An individual shall be deemed to seek election when he first:

(a) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his candidacy for office; or

(b) Announces publicly or files for office.

(6) "Commercial advertiser" means any person who sells the service of communicating messages or producing printed material for broadcast or distribution to the general public or segments of the general public whether through the use of newspapers, magazines, television and radio stations, billboard companies, direct mail advertising companies, printing companies, or otherwise.

(7) "Commission" means the agency established under RCW 42.17.350.

(8) "Compensation" unless the context requires a narrower meaning, includes payment in any form for real or personal property or services of any kind: PROVIDED, That for the purpose of compliance with RCW 42.17.241, the term "compensation" shall not include per diem allowances or other payments made by a governmental entity to reimburse a public official for expenses incurred while the official is engaged in the official business of the governmental entity.

(9) "Continuing political committee" means a political committee that is an organization of continuing existence not established in anticipation of any particular election campaign.

(10) "Contribution" includes a loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or transfer of anything of value, including personal and professional services for less than full consideration, but does not include interest on moneys deposited in a political committee's account, ordinary home hospitality and the rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. Volunteer services, for the purposes of this chapter, means services or labor for which the individual is not compensated by any person. For the purposes of this chapter, contributions other than money or its equivalents shall be deemed to have a money value equivalent to the fair market value of the contribution. Sums paid for tickets to fund-raising events such as dinners and parties are contributions; however, the amount of any such contribution may be reduced for the purpose of complying with the reporting requirements of this chapter, by the actual cost of consumables furnished in connection with the purchase of the tickets, and only the excess over the actual cost of the consumables shall be deemed a contribution.

(11) "Elected official" means any person elected at a general or special election to any public office, and any person appointed to fill a vacancy in any such office.

(12) "Election" includes any primary, general, or special election for public office and any election in which a

ballot proposition is submitted to the voters: PROVIDED, That an election in which the qualifications for voting include other than those requirements set forth in Article VI, section 1 (Amendment 63) of the Constitution of the state of Washington shall not be considered an election for purposes of this chapter.

(13) "Election campaign" means any campaign in support of or in opposition to a candidate for election to public office and any campaign in support of, or in opposition to, a ballot proposition.

(14) "Expenditure" includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. The term "expenditure" also includes a promise to pay, a payment, or a transfer of anything of value in exchange for goods, services, property, facilities, or anything of value for the purpose of assisting, benefiting, or honoring any public official or candidate, or assisting in furthering or opposing any election campaign. For the purposes of this chapter, agreements to make expenditures, contracts, and promises to pay may be reported as estimated obligations until actual payment is made. The term "expenditure" shall not include the partial or complete repayment by a candidate or political committee of the principal of a loan, the receipt of which loan has been properly reported.

(15) "Final report" means the report described as a final report in RCW 42.17.080(2).

(16) "Gift," for the purposes of RCW 42.17.170 and 42.17.2415, means a rendering of anything of value in return for which reasonable consideration is not given and received and includes a rendering of money, property, services, discount, loan forgiveness, payment of indebtedness, or reimbursements from or payments by persons (other than the federal government, or the state of Washington or any agency or political subdivision thereof) for travel or anything else of value. The term "reasonable consideration" refers to the approximate range of consideration that exists in transactions not involving donative intent. However, the value of the gift of partaking in a single hosted reception shall be determined by dividing the total amount of the cost of conducting the reception by the total number of persons partaking in the reception. "Gift" for the purposes of RCW 42.17.170 and 42.17.2415 does not include:

(a) A gift, other than a gift of partaking in a hosted reception, with a value of fifty dollars or less;

(b) The gift of partaking in a hosted reception if the value of the gift is one hundred dollars or less;

(c) A contribution that is required to be reported under RCW 42.17.090 or 42.17.243;

(d) Informational material that is transferred for the purpose of informing the recipient about matters pertaining to official business of the governmental entity of which the recipient is an official or officer, and that is not intended to confer on that recipient any commercial, proprietary, financial, economic, or monetary advantage, or the avoidance of any commercial, proprietary, financial, economic, or monetary disadvantage;

(e) A gift that is not used and that, within thirty days after receipt, is returned to the donor or delivered to a charitable organization. However, this exclusion from the definition does not apply if the recipient of the gift delivers the gift to a charitable organization and claims the delivery as a charitable contribution for tax purposes;

(f) A gift given under circumstances where it is clear beyond any doubt that the gift was not made as part of any design to gain or maintain influence in the governmental entity of which the recipient is an officer or official or with respect to any legislative matter or matters of that governmental entity; or

(g) A gift given prior to September 29, 1991.

(17) "Immediate family" includes the spouse, dependent children, and other dependent relatives, if living in the household.

(18) "Legislation" means bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the state legislature, and includes any other matter that may be the subject of action by either house or any committee of the legislature and all bills and resolutions that, having passed both houses, are pending approval by the governor.

(19) "Lobby" and "lobbying" each mean attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington, or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency under the state Administrative Procedure Act, chapter 34.05 RCW. Neither "lobby" nor "lobbying" includes an association's or other organization's act of communicating with the members of that association or organization.

(20) "Lobbyist" includes any person who lobbies either in his own or another's behalf.

(21) "Lobbyist's employer" means the person or persons by whom a lobbyist is employed and all persons by whom he is compensated for acting as a lobbyist.

(22) "Person" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized.

(23) "Person in interest" means the person who is the subject of a record or any representative designated by that person, except that if that person is under a legal disability, the term "person in interest" means and includes the parent or duly appointed legal representative.

(24) "Political advertising" includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support in any election campaign.

(25) "Political committee" means any person (except a candidate or an individual dealing with his own funds

or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

(26) "Public office" means any federal, state, county, city, town, school district, port district, special district, or other state political subdivision elective office.

(27) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

(28) "Surplus funds" mean, in the case of a political committee or candidate, the balance of contributions that remain in the possession or control of that committee or candidate subsequent to the election for which the contributions were received, and that are in excess of the amount necessary to pay remaining debts incurred by the committee or candidate prior to that election. In the case of a continuing political committee, "surplus funds" mean those contributions remaining in the possession or control of the committee that are in excess of the amount necessary to pay all remaining debts when it makes its final report under RCW 42.17.065.

(29) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

As used in this chapter, the singular shall take the plural and any gender, the other, as the context requires. [1991 1st sp.s. c 18 § 1; 1990 c 139 § 2. Prior: 1989 c 280 § 1; 1989 c 175 § 89; 1984 c 34 § 5; 1979 ex.s. c 50 § 1; 1977 ex.s. c 313 § 1; 1975 1st ex.s. c 294 § 2; 1973 c 1 § 2 (Initiative Measure No. 276, approved November 7, 1972).]

Legislative intent—1990 c 139: "The provisions of this act which repeal the reporting requirements established by chapter 423, Laws of 1987 for registered lobbyists and employers of lobbyists are not intended to alter, expand, or restrict whatsoever the definition of "lobby" or "lobbying" contained in RCW 42.17.020 as it existed prior to the enactment of chapter 423, Laws of 1987." [1990 c 139 § 1.]

Effective date—1989 c 280: "This act shall take effect January 1, 1990." [1989 c 280 § 14.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Effective date—1977 ex.s. c 313: "This 1977 amendatory act shall take effect on January 1, 1978." [1977 ex.s. c 313 § 9.]

Severability—1977 ex.s. c 313: "If any provision of this 1977 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." [1977 ex.s. c 313 § 8.]

42.17.105 Special reports, late contributions or totals over five hundred dollars—Certain late contributions prohibited. (1) Campaign treasurers shall prepare and deliver to the commission a special report regarding any contribution or aggregate of contributions which: Exceeds five hundred dollars; is from a single person or entity; and is received during a special reporting period.

Any political committee making a contribution or an aggregate of contributions to a single entity which exceeds five hundred dollars shall also prepare and deliver to the commission the special report if the contribution or aggregate of contributions is made during a special reporting period.

For the purposes of subsections (1) through (7) of this section:

(a) Each of the following intervals is a special reporting period: (i) The interval beginning after the period covered by the last report required by RCW 42.17.080 and 42.17.090 to be filed before a primary and concluding on the end of the day before that primary; and (ii) the interval composed of the twenty-one days preceding a general election; and

(b) An aggregate of contributions includes only those contributions received from a single entity during any one special reporting period or made by the contributing political committee to a single entity during any one special reporting period.

(2) If a campaign treasurer files a special report under this section for one or more contributions received from a single entity during a special reporting period, the treasurer shall also file a special report under this section for each subsequent contribution of any size which is received from that entity during the special reporting period. If a political committee files a special report under this section for a contribution or contributions made to a single entity during a special reporting period, the political committee shall also file a special report for each subsequent contribution of any size which is made to that entity during the special reporting period.

(3) Except as provided in subsection (4) of this section, the special report required by this section shall be delivered in written form, including but not limited to mailgram, telegram, or nightletter. The special report required of a contribution recipient by subsection (1) of this section shall be delivered to the commission within forty-eight hours of the time, or on the first working day after: The contribution exceeding five hundred dollars is received by the candidate or treasurer; the aggregate received by the candidate or treasurer first exceeds five hundred dollars; or the subsequent contribution that must be reported under subsection (2) of this section is received by the candidate or treasurer. The special report required of a contributor by subsection (1) of this section or RCW 42.17.175 shall be delivered to the commission, and the candidate or political committee to whom the contribution or contributions are made, within twenty-four hours of the time, or on the first working day after: The contribution is made; the aggregate of contributions made first exceeds five hundred dollars; or the subsequent contribution that must be reported under subsection (2) of this section is made.

(4) The special report may be transmitted orally by telephone to the commission to satisfy the delivery period required by subsection (3) of this section if the written form of the report is also mailed to the commission and postmarked within the delivery period established in subsection (3) of this section.

(5) The special report shall include at least:

- (a) The amount of the contribution or contributions;
- (b) The date or dates of receipt;
- (c) The name and address of the donor;
- (d) The name and address of the recipient; and
- (e) Any other information the commission may by rule require.

(6) Contributions reported under this section shall also be reported as required by other provisions of this chapter.

(7) The commission shall publish daily a summary of the special reports made under this section and RCW 42.17.175.

(8) It is a violation of this chapter for any person to make, or for any candidate or political committee to accept from any one person, contributions reportable under RCW 42.17.090 in the aggregate exceeding fifty thousand dollars for any campaign for state-wide office or exceeding five thousand dollars for any other campaign subject to the provisions of this chapter within twenty-one days of a general election. This subsection does not apply to contributions made by, or accepted from, a major Washington state political party as defined in RCW 29.01.090.

(9) Contributions governed by this section include, but are not limited to, contributions made or received indirectly through a third party or entity whether the contributions are or are not reported to the commission as earmarked contributions under RCW 42.17.135. [1991 c 157 § 1; 1989 c 280 § 11; 1986 c 228 § 2; 1985 c 359 § 1; 1983 c 176 § 1.]

Effective date—1989 c 280: See note following RCW 42.17.020.

42.17.170 Reporting by lobbyists. (1) Any lobbyist registered under RCW 42.17.150 and any person who lobbies shall file with the commission periodic reports of his activities signed by the lobbyist. The reports shall be made in the form and manner prescribed by the commission. They shall be due monthly and shall be filed within fifteen days after the last day of the calendar month covered by the report.

(2) Each such monthly periodic report shall contain:

(a) The totals of all expenditures for lobbying activities made or incurred by such lobbyist or on behalf of such lobbyist by the lobbyist's employer during the period covered by the report. Such totals for lobbying activities shall be segregated according to financial category, including compensation; food and refreshments; living accommodations; advertising; travel; contributions; and other expenses or services. Each individual expenditure of more than twenty-five dollars for entertainment shall be identified by date, place, amount, and the names of all persons in the group partaking in or of such entertainment including any portion thereof attributable to the lobbyist's participation therein, without allocating any portion of such expenditure to individual participants. However, if the expenditure for a single hosted reception is more than one hundred dollars per person partaking therein, the report shall specify the per person amount, which shall be determined by dividing the total amount of the expenditure

by the total number of persons partaking in the reception.

Notwithstanding the foregoing, lobbyists are not required to report the following:

- (i) Unreimbursed personal living and travel expenses not incurred directly for lobbying;
- (ii) Any expenses incurred for his or her own living accommodations;
- (iii) Any expenses incurred for his or her own travel to and from hearings of the legislature;
- (iv) Any expenses incurred for telephone, and any office expenses, including rent and salaries and wages paid for staff and secretarial assistance.

(b) In the case of a lobbyist employed by more than one employer, the proportionate amount of such expenditures in each category incurred on behalf of each of his employers.

(c) An itemized listing of each such expenditure in the nature of a contribution of money or of tangible or intangible personal property to any candidate, elected official, or officer or employee of any agency, or any political committee supporting or opposing any ballot proposition, or for or on behalf of any candidate, elected official, or officer or employee of any agency, or any political committee supporting or opposing any ballot proposition. All contributions made to, or for the benefit of, any candidate, elected official, or officer or employee of any agency, or any political committee supporting or opposing any ballot proposition shall be identified by date, amount, and the name of the candidate, elected official, or officer or employee of any agency, or any political committee supporting or opposing any ballot proposition receiving, or to be benefited by each such contribution.

(d) The subject matter of proposed legislation or other legislative activity or rule-making under chapter 34.05 RCW, the state Administrative Procedure Act, and the state agency considering the same, which the lobbyist has been engaged in supporting or opposing during the reporting period.

(e) Such other information relevant to lobbying activities as the commission shall by rule prescribe. Information supporting such activities as are required to be reported is subject to audit by the commission.

(f) A listing of each gift, as defined in RCW 42.17.020, made to a state elected official or executive state officer or to a member of the immediate family of such an official or officer. Such a gift shall be separately identified by the date it was given, the approximate value of the gift, and the name of the recipient. However, for a hosted reception where the average per person amount is reported under (a) of this subsection, the approximate value for the gift of partaking in the event is such average per person amount. The commission shall adopt forms to be used for reporting the giving of gifts under this subsection (2)(f). The forms shall be designed to permit a lobbyist to report on a separate form for each recipient the reportable gifts given to that recipient during the reporting period or, alternatively, to report on one form all reportable gifts given by the lobbyist during the reporting period.

(3) If a state elected official or a member of such an official's immediate family is identified by a lobbyist in such a report as having received from the lobbyist a gift, as defined in RCW 42.17.020, the lobbyist shall transmit to the official a copy of the completed form used to identify the gift in the report at the same time the report is filed with the commission. [1991 1st sp.s. c 18 § 2; 1990 c 139 § 3; 1989 c 175 § 90; 1987 c 423 § 1; 1985 c 367 § 9; 1982 c 147 § 13; 1977 ex.s. c 313 § 5; 1975 1st ex.s. c 294 § 10; 1973 c 1 § 17 (Initiative Measure No. 276, approved November 7, 1972).]

Legislative intent—1990 c 139: See note following RCW 42.17.020.

Effective date—1989 c 175: See note following RCW 34.05.010.

Effective date—Severability—1977 ex.s. c 313: See notes following RCW 42.17.020.

42.17.175 Special reports—Late contributions or totals over five hundred dollars. Any lobbyist registered under RCW 42.17.150, any person who lobbies, and any lobbyist's employer making a contribution or an aggregate of contributions to a single entity that exceeds five hundred dollars during a special reporting period before a primary or general election, as such period is specified in RCW 42.17.105(1), shall file one or more special reports for the contribution or aggregate of contributions and for subsequent contributions made during that period under the same circumstances and to the same extent that a contributing political committee must file such a report or reports under RCW 42.17.105. Such a special report shall be filed in the same manner provided under RCW 42.17.105 for a special report of a contributing political committee. [1991 c 157 § 2; 1985 c 359 § 2.]

42.17.180 Reports by employers of registered lobbyists. (1) Every employer of a lobbyist registered under this chapter during the preceding calendar year shall file with the commission on or before March 31st of each year a statement disclosing for the preceding calendar year the following information:

(a) The name of each state elected official and the name of each candidate for state office who was elected to the office and any member of the immediate family of those persons to whom the employer has paid any compensation in the amount of five hundred dollars or more during the preceding calendar year for personal employment or professional services, including professional services rendered by a corporation, partnership, joint venture, association, union, or other entity in which the person holds any office, directorship, or any general partnership interest, or an ownership interest of ten percent or more, the value of the compensation in accordance with the reporting provisions set out in RCW 42.17.241(2), and the consideration given or performed in exchange for the compensation.

(b) The name of each state elected official, successful candidate for state office, or members of his immediate family to whom the lobbyist employer made expenditures, directly or indirectly, either through a lobbyist or

otherwise, the amount of the expenditures and the purpose for the expenditures. For the purposes of this subsection, the term expenditure shall not include any expenditure made by the employer in the ordinary course of business if the expenditure is not made for the purpose of influencing, honoring, or benefiting the elected official, successful candidate, or member of his immediate family, as an elected official or candidate.

(c) The total expenditures made by the employer for lobbying purposes, whether through or on behalf of a registered lobbyist or otherwise.

(d) All contributions made to a candidate for state office, to a political committee supporting or opposing a candidate for state office, or to a political committee supporting or opposing a state-wide ballot proposition. Such contributions shall be identified by the name and the address of the recipient and the aggregate amount contributed to each such recipient.

(e) The name and address of each registered lobbyist employed by the employer and the total expenditures made by the employer for each such lobbyist for lobbying purposes.

(f) Such other information as the commission prescribes by rule.

(2)(a) Except as provided in (b) of this subsection, an employer of a lobbyist registered under this chapter shall file a special report with the commission if the employer makes a contribution or contributions aggregating more than one hundred dollars in a calendar month to any one of the following: A candidate, elected official, officer or employee of an agency, or political committee. The report shall identify the date and amount of each such contribution and the name of the candidate, elected official, agency officer or employee, or political committee receiving the contribution or to be benefited by the contribution. The report shall be filed on a form prescribed by the commission and shall be filed within fifteen days after the last day of the calendar month during which the contribution was made.

(b) The provisions of (a) of this subsection do not apply to a contribution which is made through a registered lobbyist and reportable under RCW 42.17.170. [1990 c 139 § 4; 1987 c 423 § 2; 1984 c 34 § 6; 1975 1st ex.s. c 294 § 11; 1973 c 1 § 18 (Initiative Measure No. 276, approved November 7, 1972).]

Legislative intent—1990 c 139: See note following RCW 42.17.020.

42.17.200 Grass roots lobbying campaigns. (1) Any person who has made expenditures, not reported by a registered lobbyist under RCW 42.17.170 or by a candidate or political committee under RCW 42.17.065 or 42.17.080, exceeding five hundred dollars in the aggregate within any three-month period or exceeding two hundred dollars in the aggregate within any one-month period in presenting a program addressed to the public, a substantial portion of which is intended, designed, or calculated primarily to influence legislation shall be required to register and report, as provided in subsection (2) of this section, as a sponsor of a grass roots lobbying campaign.

(2) Within thirty days after becoming a sponsor of a grass roots lobbying campaign, the sponsor shall register by filing with the commission a registration statement, in such detail as the commission shall prescribe, showing:

(a) The sponsor's name, address, and business or occupation, and, if the sponsor is not an individual, the names, addresses, and titles of the controlling persons responsible for managing the sponsor's affairs;

(b) The names, addresses, and business or occupation of all persons organizing and managing the campaign, or hired to assist the campaign, including any public relations or advertising firms participating in the campaign, and the terms of compensation for all such persons;

(c) The names and addresses of each person contributing twenty-five dollars or more to the campaign, and the aggregate amount contributed;

(d) The purpose of the campaign, including the specific legislation, rules, rates, standards, or proposals that are the subject matter of the campaign;

(e) The totals of all expenditures made or incurred to date on behalf of the campaign, which totals shall be segregated according to financial category, including but not limited to the following: Advertising, segregated by media, and in the case of large expenditures (as provided by rule of the commission), by outlet; contributions; entertainment, including food and refreshments; office expenses including rent and the salaries and wages paid for staff and secretarial assistance, or the proportionate amount thereof paid or incurred for lobbying campaign activities; consultants; and printing and mailing expenses.

(3) Every sponsor who has registered under this section shall file monthly reports with the commission, which reports shall be filed by the tenth day of the month for the activity during the preceding month. The reports shall update the information contained in the sponsor's registration statement and in prior reports and shall show contributions received and totals of expenditures made during the month, in the same manner as provided for in the registration statement.

(4) When the campaign has been terminated, the sponsor shall file a notice of termination with the final monthly report, which notice shall state the totals of all contributions and expenditures made on behalf of the campaign, in the same manner as provided for in the registration statement. [1990 c 139 § 5; 1985 c 367 § 10; 1973 c 1 § 20 (Initiative Measure No. 276, approved November 7, 1972).]

Legislative intent—1990 c 139: See note following RCW 42.17.020.

42.17.2401 "Executive state officer" defined. For the purposes of RCW 42.17.240, the term "executive state officer" includes:

(1) The chief administrative law judge, the director of agriculture, the administrator of the office of marine safety, the administrator of the Washington basic health plan, the director of the department of services for the blind, the director of the *state system of community

colleges, the director of community development, the secretary of corrections, the director of ecology, the commissioner of employment security, the chairman of the energy facility site evaluation council, the director of the energy office, the secretary of the state finance committee, the director of financial management, the director of fisheries, the executive secretary of the forest practices appeals board, the director of the gambling commission, the director of general administration, the secretary of health, the administrator of the Washington state health care authority, the executive secretary of the health care facilities authority, the executive secretary of the higher education facilities authority, the director of the higher education personnel board, the executive secretary of the horse racing commission, the executive secretary of the human rights commission, the executive secretary of the indeterminate sentence review board, the director of the department of information services, the director of the interagency committee for outdoor recreation, the executive director of the state investment board, the director of labor and industries, the director of licensing, the director of the lottery commission, the director of the office of minority and women's business enterprises, the director of parks and recreation, the director of personnel, the executive director of the public disclosure commission, the director of retirement systems, the director of revenue, the secretary of social and health services, the chief of the Washington state patrol, the executive secretary of the board of tax appeals, the director of trade and economic development, the secretary of transportation, the secretary of the utilities and transportation commission, the director of veterans affairs, the director of wildlife, the president of each of the regional and state universities and the president of The Evergreen State College, each district and each campus president of each state community college;

(2) Each professional staff member of the office of the governor;

(3) Each professional staff member of the legislature; and

(4) Central Washington University board of trustees, board of trustees of each community college, each member of the **state board for community college education, state convention and trade center board of directors, committee for deferred compensation, Eastern Washington University board of trustees, Washington economic development finance authority, The Evergreen State College board of trustees, forest practices appeals board, forest practices board, gambling commission, Washington health care facilities authority, higher education coordinating board, higher education facilities authority, higher education personnel board, horse racing commission, state housing finance commission, human rights commission, indeterminate sentence review board, board of industrial insurance appeals, information services board, interagency committee for outdoor recreation, state investment board, liquor control board, lottery commission, marine oversight board, oil and gas conservation committee, Pacific Northwest electric power and conservation planning council, parks and recreation commission, personnel appeals board, personnel

board, board of pilotage [commissioners], pollution control hearings board, public disclosure commission, public pension commission, shorelines hearing board, state employees' benefits board, board of tax appeals, transportation commission, University of Washington board of regents, utilities and transportation commission, Washington state maritime commission, Washington public power supply system executive board, Washington State University board of regents, Western Washington University board of trustees, and wildlife commission. [1991 c 200 § 404; 1991 c 3 § 293. Prior: 1989 1st ex.s. c 9 § 812; 1989 c 279 § 22; 1989 c 158 § 2; 1988 c 36 § 13; 1987 c 504 § 14; 1985 c 6 § 8; 1984 c 34 § 2.]

Reviser's note: *(1) The "state system of community colleges" was redesignated the "state system of community and technical colleges" by 1991 c 238 § 22.

** (2) The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Report—Severability—1989 c 279: See RCW 43.163.900 and 43.163.901.

Alphabetization—1989 c 158 § 2: "When section 2 of this act is codified, the code reviser shall arrange the names of the agencies in each subsection in alphabetical order." [1989 c 158 § 3.] The names of the agencies in the above section have been arranged according to the first distinctive word of each agency's name.

Severability—Effective date—1987 c 504: See RCW 43.105.901 and 43.105.902.

42.17.2415 Reporting gifts. At the same time that an elected official or executive state officer must file a statement of financial affairs under RCW 42.17.240(1), the official or officer shall file a statement identifying each gift, as defined in RCW 42.17.020, which was received by the official or officer or by a member of his or her immediate family during the previous calendar year. The statement shall apply to that portion of the previous calendar year during which the official or officer held an office or position for which a statement of financial affairs is required under RCW 42.17.240. The statement shall identify the nature of the gift, the date it was received, and the name of the donor. The commission may adopt a form for reporting the receipt of gifts under this section or may incorporate that reporting into the form or forms adopted by the commission for the statement of financial affairs. [1991 1st sp.s. c 18 § 3.]

42.17.243 Public office fund—What constitutes, restrictions on use—Reporting of—Disposal of remaining funds. (1) Elected and appointed officials required to report under RCW 42.17.240, shall report for themselves and for members of their immediate family to the commission any contributions received during the preceding calendar year for the officials' use in defraying nonreimbursed public office related expenses. Contributions reported under this section shall be referred to as a "public office fund" and shall not be transferred to a political committee nor used to promote or oppose a candidate or ballot proposition, other than as provided by subsection (3)(a) of this section. Reimbursements or

payments for travel do not constitute contributions for the purposes of this section.

A report shall be filed during the month of January of any year following a year in which such contributions were received for or expenditures made from a public office fund. The report shall include:

(a) The name and address of each contributor;

(b) A description of each contribution, including the date on which it was received and its amount or, if its dollar value is unascertainable, an estimate of its fair market value; and

(c) A description of each expenditure made from a public office fund, including the name and address of the recipient, the amount, and the date of each such expenditure.

(2) No report under subsection (1) of this section shall be required if:

(a) The receipt of the contribution has been reported pursuant to RCW 42.17.065 (continuing political committee reports) or RCW 42.17.090 (political committee reports); or

(b) The contribution is in the form of meals, refreshments, or entertainment given in connection with official appearances or occasions where public business was discussed.

(3) Any funds which remain in a public office fund after all permissible public office related expenses have been paid may only be disposed of in one or more of the following ways:

(a) Returned to a contributor in an amount not to exceed that contributor's original contribution; or

(b) Donated to a charitable organization registered in accordance with chapter 19.09 RCW; or

(c) Transferred to the state treasurer for deposit in the general fund. [1991 1st sp.s. c 18 § 4; 1977 ex.s. c 336 § 5.]

Severability—1977 ex.s. c 336: See note following RCW 42.17.040.

42.17.310 Certain personal and other records exempt. (1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to

effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time the complaint is filed the complainant indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

(m) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed with the utilities and transportation commission under *RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW.

(p) Financial disclosures filed by private vocational schools under chapter 28C.10 RCW.

(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.

(r) Financial and commercial information and records supplied by businesses during application for loans or program services provided by chapter 43.163 RCW and chapters 43.31, 43.63A, and 43.168 RCW.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

(t) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(u) The residential addresses and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers.

(w) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(x) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420.

(y) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW.

(z) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information.

(aa) Financial and valuable trade information under RCW 51.36.120.

(bb) Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123-.020 or a rape crisis center as defined in RCW 70.125.030.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40-.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the

record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld. [1991 c 301 § 13; 1991 c 87 § 13; 1991 c 23 § 10; 1991 c 1 § 1; 1990 2nd ex.s. c 1 § 1103; 1990 c 256 § 1. Prior: 1989 1st ex.s. c 9 § 407; 1989 c 352 § 7; 1989 c 279 § 23; 1989 c 238 § 1; 1989 c 205 § 20; 1989 c 189 § 3; 1989 c 11 § 12; prior: 1987 c 411 § 10; 1987 c 404 § 1; 1987 c 370 § 16; 1987 c 337 § 1; 1987 c 107 § 2; prior: 1986 c 299 § 25; 1986 c 276 § 7; 1985 c 414 § 8; 1984 c 143 § 21; 1983 c 133 § 10; 1982 c 64 § 1; 1977 ex.s. c 314 § 13; 1975-'76 2nd ex.s. c 82 § 5; 1975 1st ex.s. c 294 § 17; 1973 c 1 § 31 (Initiative Measure No. 276, approved November 7, 1972).]

Reviser's note: (1) This section was amended by 1991 c 23 § 10, 1991 c 87 § 13, and by 1991 c 301 § 13, each without reference to the other. All amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

*(2) RCW 81.34.070 was repealed by 1991 c 49 § 1.

Finding—1991 c 301: See note following RCW 10.99.020.

Effective date—1991 c 87: See note following RCW 18.64.350.

Effective dates—1991 c 23: See RCW 40.24.900.

Effective dates—1990 2nd ex.s. c 1: See note following RCW 84.52.010.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Report—Severability—1989 c 279: See RCW 43.163.900 and 43.163.901.

Severability—1989 c 11: See note following RCW 9A.56.220.

Severability—1987 c 411: See RCW 69.45.900.

Severability—Effective date—1986 c 299: See RCW 28C.10.900 and 28C.10.902.

Severability—1986 c 276: See RCW 53.31.901.

Basic health plan records: RCW 70.47.150.

Exemptions from public inspection

accounting records of special inquiry judge: RCW 10.29.090.

certificate submitted by physically or mentally disabled person seeking a driver's license: RCW 46.20.041.

commercial fertilizers, sales reports: RCW 15.54.362.

criminal records: Chapter 10.97 RCW.

examination reports of the supervisor of banking and supervisor of savings and loan associations: RCW 30.04.075, 32.04.220, 33.04.110.

medical disciplinary board, reports required to be filed with: RCW 18.72.265.

organized crime

advisory board files: RCW 10.29.030.

investigative information: RCW 43.43.856.

salary and fringe benefit survey information: RCW 28B.16.110, 41.06.160.

42.17.311 Duty to disclose or withhold information—Otherwise provided. Nothing in RCW 42.17.310(1) (t) through (v) shall affect a positive duty of an agency to disclose or a positive duty to withhold

information which duty to disclose or withhold is contained in any other law. [1991 c 23 § 11; 1990 c 256 § 2; 1987 c 404 § 3.]

Effective dates—1991 c 23: See RCW 40.24.900.

42.17.312 Medical records—Health care information. Chapter 70.02 RCW applies to public inspection and copying of health care information of patients. [1991 c 335 § 902.]

Application and construction—Short title—Severability—Captions not law—1991 c 335: See RCW 70.02.901 through 70.02.904.

42.17.313 Application for license under chapter 31.45 RCW—Certain information exempt. (Effective January 1, 1992.) Information in an application for licensing under RCW 31.45.030 regarding the personal residential address, telephone number of the applicant, or financial statement is exempt from disclosure under this chapter. [1991 c 355 § 22.]

Effective date, implementation—1991 c 355: See RCW 31.45.900.

Chapter 42.23

CODE OF ETHICS FOR MUNICIPAL OFFICERS—CONTRACT INTERESTS

Sections

42.23.030 Interest in contracts prohibited—Exceptions.

42.23.030 Interest in contracts prohibited—Exceptions. No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein. This section shall not apply in the following cases:

(1) The furnishing of electrical, water or other utility services by a municipality engaged in the business of furnishing such services, at the same rates and on the same terms as are available to the public generally;

(2) The designation of public depositaries for municipal funds;

(3) The publication of legal notices required by law to be published by any municipality, upon competitive bidding or at rates not higher than prescribed by law for members of the general public;

(4) The designation of a school director as clerk or as both clerk and purchasing agent of a school district;

(5) The employment of any person by a municipality, other than a county with a population of one hundred twenty-five thousand or more, a city of the first or second class, an irrigation district encompassing in excess of fifty thousand acres, or a first class school district, for unskilled day labor at wages not exceeding one hundred dollars in any calendar month;

(6) The letting of any other contract (except a sale or lease as seller or lessor) by a municipality, other than a

county with a population of one hundred twenty-five thousand or more, a city of the first or second class, an irrigation district encompassing in excess of fifty thousand acres, or a first class school district: **PROVIDED**, That the total volume of business represented by such contract or contracts in which a particular officer is interested, singly or in the aggregate, as measured by the dollar amount of the municipality's liability thereunder, shall not exceed seven hundred fifty dollars in any calendar month: **PROVIDED FURTHER**, That in the case of a particular officer of a third class city or town, or a noncharter optional code city, or a member of any county fair board in a county which has not established a county purchasing department pursuant to RCW 36-.32.240, the total volume of such contract or contracts authorized in this subsection may exceed seven hundred fifty dollars in any calendar month but shall not exceed nine thousand dollars in any calendar year: **PROVIDED FURTHER**, That there shall be public disclosure by having an available list of such purchases or contracts, and if the supplier or contractor is an official of the municipality, he or she shall not vote on the authorization;

(7) The leasing by a port district as lessor of port district property to a municipal officer or to a contracting party in which a municipal officer may be beneficially interested, if in addition to all other legal requirements, a board of three disinterested appraisers, who shall be appointed from members of the American institute of real estate appraisers by the presiding judge of the superior court in the county where the property is situated, shall find and the court finds that all terms and conditions of such lease are fair to the port district and are in the public interest;

(8) The letting of any contract for the driving of a school bus in a second class school district: **PROVIDED**, That the terms of such contract shall be commensurate with the pay plan or collective bargaining agreement operating in the district;

(9) The letting of any contract to the spouse of an officer of a second class school district in which less than two hundred full time equivalent students are enrolled at the start of the school year as defined in RCW 28A.150.040, when such contract is solely for employment as a certificated or classified employee of the school district, or the letting of any contract to the spouse of an officer of a second class district in which less than five hundred full time equivalent students are enrolled at the start of the school year as defined in RCW 28A.150.040, when such contract is solely for employment as a substitute teacher for the school district: **PROVIDED**, That the terms of such contract shall be commensurate with the pay plan or collective bargaining agreement applicable to all district employees and the board of directors has found, consistent with the written policy under RCW 28A.330.240, that there is a shortage of substitute teachers in the school district. [1991 c 363 § 120; 1990 c 33 § 573; 1989 c 263 § 1; 1983 1st ex.s. c 44 § 1. Prior: 1980 c 39 § 1; 1979 ex.s. c 4 § 1; 1971 ex.s. c 242 § 1; 1961 c 268 § 4.]

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

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

Severability—1989 c 263: "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." [1989 c 263 § 3.]

Severability—1980 c 39: "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." [1980 c 39 § 3.]

Chapter 42.30

OPEN PUBLIC MEETINGS ACT

Sections

42.30.140 Chapter controlling—Application.

42.30.140 Chapter controlling—Application. If any provision of this chapter conflicts with the provisions of any other statute, the provisions of this chapter shall control: **PROVIDED**, That this chapter shall not apply to:

(1) The proceedings concerned with the formal issuance of an order granting, suspending, revoking, or denying any license, permit, or certificate to engage in any business, occupation, or profession or to any disciplinary proceedings involving a member of such business, occupation, or profession, or to receive a license for a sports activity or to operate any mechanical device or motor vehicle where a license or registration is necessary; or

(2) That portion of a meeting of a quasi-judicial body which relates to a quasi-judicial matter between named parties as distinguished from a matter having general effect on the public or on a class or group; or

(3) Matters governed by chapter 34.05 RCW, the Administrative Procedure Act; or

(4)(a) Collective bargaining sessions with employee organizations, including contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement; or (b) that portion of a meeting during which the governing body is planning or adopting the strategy or position to be taken by the governing body during the course of any collective bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress. [1990 c 98 § 1; 1989 c 175 § 94; 1973 c 66 § 4; 1971 ex.s. c 250 § 14.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Title 43

STATE GOVERNMENT—EXECUTIVE

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Chapter 43.01

STATE OFFICERS—GENERAL PROVISIONS

Sections

43.01.046 Vacations—Provisions not applicable to employees of
 Seattle Vocational Institute.
 43.01.090 Certain departments to pay housing costs.

**43.01.046 Vacations—Provisions not applicable to
 employees of Seattle Vocational Institute.** Employees of
 the Seattle Vocational Institute are exempt from RCW
 43.01.040 through 43.01.044 until July 1, 1993. [1991 c
 238 § 110.]

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

43.01.090 Certain departments to pay housing costs.
 The director of general administration may assess a
 charge or rent against each state board, commission,
 agency, office, department, activity, or other occupant or
 user for payment of a proportionate share of costs for
 occupancy of buildings, structures, or facilities including
 but not limited to all costs of acquiring, constructing,
 operating, and maintaining such buildings, structures, or
 facilities and the repair, remodeling, or furnishing
 thereof and for the rendering of any service or the fur-
 nishing or providing of any supplies, equipment, or
 materials.

The director of general administration may recover
 the full costs including appropriate overhead charges of
 the foregoing by periodic billings as determined by the

director including but not limited to transfers upon accounts and advancements into the general administration facilities and services revolving fund. Rates shall be established by the director of general administration after consultation with the director of financial management. The director of general administration may allot, provide, or furnish any of such facilities, structures, services, equipment, supplies, or materials to any other public service type occupant or user at such rates or charges as are equitable and reasonably reflect the actual costs of the services provided: PROVIDED, HOWEVER, That the legislature, its duly constituted committees, interim committees and other committees shall be exempted from the provisions of this section.

Upon receipt of such bill, each entity, occupant, or user shall cause a warrant or check in the amount thereof to be drawn in favor of the department of general administration which shall be deposited in the state treasury to the credit of the general administration facilities and services revolving fund established in RCW 43.19.500 unless the director of financial management has authorized another method for payment of costs. [1991 1st sp.s. c 31 § 10; 1979 c 151 § 81; 1973 1st ex.s. c 82 § 1; 1971 ex.s. c 159 § 1; 1965 c 8 § 43.01.090. Prior: (i) 1951 c 131 § 1; 1941 c 228 § 1; Rem. Supp. 1941 § 10964-30. (ii) 1951 c 131 § 1; 1941 c 228 § 2; Rem. Supp. 1941 § 10964-31.]

Severability—1991 1st sp.s. c 31: See RCW 43.991.900.

Effective date—1973 1st ex.s. c 82: "This 1973 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 July 1, 1973." [1973 1st ex.s. c 82 § 2.]

Agricultural commodity commissions exempt: RCW 15.04.200.

General administration facilities and services revolving fund: RCW 43.19.500.

Housing for state offices, departments, and institutions: Chapter 43.82 RCW.

Chapter 43.03

SALARIES AND EXPENSES

Sections	
43.03.011	Salaries of state elected officials of the executive branch.
43.03.012	Salaries of judges.
43.03.013	Salaries of members of the legislature.
43.03.028	State committee on agency officials' salaries—Members—Duties—Reports.
43.03.050	Subsistence, lodging and refreshment, and per diem allowance for officials, employees, and members of boards, commissions, or committees.
43.03.060	Mileage allowance.

43.03.011 Salaries of state elected officials of the executive branch. Pursuant to Article XXVIII, section 1 of the state Constitution and RCW 43.03.010 and 43.03.310, the annual salaries of the state elected officials of the executive branch shall be as follows:

- (1) Effective September 3, 1990:
 - (a) Governor \$ 99,600
 - (b) Lieutenant governor \$ 52,600
 - (c) Secretary of state \$ 54,200

- (d) Treasurer \$ 67,000
- (e) Auditor \$ 69,100
- (f) Attorney general \$ 78,000
- (g) Superintendent of public instruction . . . \$ 71,900
- (h) Commissioner of public lands \$ 71,900
- (i) Insurance commissioner \$ 65,800
- (2) Effective September 3, 1991:
 - (a) Governor \$112,000
 - (b) Lieutenant governor \$ 58,600
 - (c) Secretary of state \$ 60,100
 - (d) Treasurer \$ 74,400
 - (e) Auditor \$ 77,800
 - (f) Attorney general \$ 86,400
 - (g) Superintendent of public instruction . . . \$ 80,500
 - (h) Commissioner of public lands \$ 80,500
 - (i) Insurance commissioner \$ 72,700
- (3) Effective September 3, 1992:
 - (a) Governor \$121,000
 - (b) Lieutenant governor \$ 62,700
 - (c) Secretary of state \$ 64,300
 - (d) Treasurer \$ 79,500
 - (e) Auditor \$ 84,100
 - (f) Attorney general \$ 92,000
 - (g) Superintendent of public instruction . . . \$ 86,600
 - (h) Commissioner of public lands \$ 86,600
 - (i) Insurance commissioner \$ 77,200

(4) The lieutenant governor shall receive the fixed amount of his salary plus 1/260th of the difference between his salary and that of the governor for each day that the lieutenant governor is called upon to perform the duties of the governor by reason of the absence from the state, removal, resignation, death, or disability of the governor. [1991 1st sp.s. c 1 § 1; 1989 2nd ex.s. c 4 § 1; 1987 1st ex.s. c 1 § 1, part.]

43.03.012 Salaries of judges. Pursuant to Article XXVIII, section 1 of the state Constitution and RCW 2.04.092, 2.06.062, 2.08.092, 3.58.010, and 43.03.310, the annual salaries of the judges of the state shall be as follows:

- (1) Effective September 3, 1990:
 - (a) Justices of the supreme court \$ 89,300
 - (b) Judges of the court of appeals \$ 84,900
 - (c) Judges of the superior court \$ 80,500
 - (d) Full-time judges of the district court . . \$ 76,600
- (2) Effective September 3, 1991:
 - (a) Justices of the supreme court \$ 99,900
 - (b) Judges of the court of appeals \$ 95,000
 - (c) Judges of the superior court \$ 90,100
 - (d) Full-time judges of the district court . . \$ 85,700
- (3) Effective September 3, 1992:
 - (a) Justices of the supreme court \$107,200
 - (b) Judges of the court of appeals \$101,900
 - (c) Judges of the superior court \$ 96,600
 - (d) Full-time judges of the district court . . \$ 91,900
- (4) The salary for a part-time district court judge shall be the proportion of full-time work for which the position is authorized, multiplied by the salary for a full-time district court judge. [1991 1st sp.s. c 1 § 2; 1989 2nd ex.s. c 4 § 2; 1987 1st ex.s. c 1 § 1, part.]

43.03.013 Salaries of members of the legislature.

Pursuant to Article XXVIII, section 1 of the state Constitution and RCW 43.03.010 and 43.03.310, the annual salary of members of the legislature shall be:

- (1) Effective September 3, 1990:
- | | |
|----------------------------|-----------|
| (a) Legislator | \$ 19,900 |
| (b) Speaker of the house | \$ 21,900 |
| (c) Senate majority leader | \$ 20,900 |
| (d) Senate minority leader | \$ 20,900 |
| (e) House minority leader | \$ 20,900 |
- (2) Effective September 3, 1991:
- | | |
|----------------------------|-----------|
| (a) Legislator | \$ 23,200 |
| (b) Speaker of the house | \$ 29,000 |
| (c) Senate majority leader | \$ 25,100 |
| (d) Senate minority leader | \$ 25,100 |
| (e) House minority leader | \$ 25,100 |
- (3) Effective September 3, 1992:
- | | |
|----------------------------|-----------|
| (a) Legislator | \$ 25,900 |
| (b) Speaker of the house | \$ 33,900 |
| (c) Senate majority leader | \$ 29,900 |
| (d) Senate minority leader | \$ 29,900 |
| (e) House minority leader | \$ 29,900 |
- [1991 1st sp.s. c 1 § 3; 1989 2nd ex.s. c 4 § 3; 1987 1st ex.s. c 1 § 1, part.]

43.03.028 State committee on agency officials' salaries—Members—Duties—Reports. (1) There is hereby created a state committee on agency officials' salaries to consist of seven members, or their designees, as follows: The president of the University of Puget Sound; the chairperson of the council of presidents of the state's four-year institutions of higher education; the chairperson of the State Personnel Board; the president of the Association of Washington Business; the president of the Pacific Northwest Personnel Managers' Association; the president of the Washington State Bar Association; and the president of the Washington State Labor Council. If any of the titles or positions mentioned in this subsection are changed or abolished, any person occupying an equivalent or like position shall be qualified for appointment by the governor to membership upon the committee.

(2) The committee shall study the duties and salaries of the directors of the several departments and the members of the several boards and commissions of state government, who are subject to appointment by the governor or whose salaries are fixed by the governor, and of the chief executive officers of the following agencies of state government:

The arts commission; the human rights commission; the board of accountancy; the board of pharmacy; the capitol historical association and museum; the eastern Washington historical society; the Washington state historical society; the interagency committee for outdoor recreation; the criminal justice training commission; the department of personnel; the state finance committee; the state library; the traffic safety commission; the horse racing commission; the advisory council on vocational education; the public disclosure commission; the state conservation commission; the commission on Hispanic affairs; the commission on Asian-American affairs; the

state board for volunteer fire fighters; the transportation improvement board; the *public employees relations commission; the forest practices appeals board; and the energy facilities site evaluation council.

The committee shall report to the governor or the chairperson of the appropriate salary fixing authority at least once in each fiscal biennium on such date as the governor may designate, but not later than seventy-five days prior to the convening of each regular session of the legislature during an odd-numbered year, its recommendations for the salaries to be fixed for each position.

(3) Committee members shall be reimbursed by the department of personnel for travel expenses under RCW 43.03.050 and 43.03.060. [1991 c 3 § 294; 1988 c 167 § 9. Prior: 1987 c 504 § 15; 1987 c 249 § 7; 1986 c 155 § 9; 1982 c 163 § 21; 1980 c 87 § 20; prior: 1977 ex.s. c 127 § 1; 1977 c 75 § 36; 1970 ex.s. c 43 § 2; 1967 c 19 § 1; 1965 c 8 § 43.03.028; prior: 1961 c 307 § 1; 1955 c 340 § 1.]

*Reviser's note: Reference to "public employees relations commission" should be to "public employment relations commission."

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Severability—Effective date—1987 c 504: See RCW 43.105.901 and 43.105.902.

Contingent effective date—Severability—1986 c 155: See notes following RCW 43.03.300.

Severability—Effective date—1982 c 163: See notes following RCW 2.10.052.

Severability—1970 ex.s. c 43: See note following RCW 43.03.027.

43.03.050 Subsistence, lodging and refreshment, and per diem allowance for officials, employees, and members of boards, commissions, or committees. (1) The director of financial management shall prescribe reasonable allowances to cover reasonable and necessary subsistence and lodging expenses for elective and appointive officials and state employees while engaged on official business away from their designated posts of duty. The director of financial management may prescribe and regulate the allowances provided in lieu of subsistence and lodging expenses and may prescribe the conditions under which reimbursement for subsistence and lodging may be allowed. The schedule of allowances adopted by the office of financial management may include special allowances for foreign travel and other travel involving higher than usual costs for subsistence and lodging. The allowances established by the director shall not exceed the rates set by the federal government for federal employees.

(2) Those persons appointed to serve without compensation on any state board, commission, or committee, if entitled to payment of travel expenses, shall be paid pursuant to special per diem rates prescribed in accordance with subsection (1) of this section by the office of financial management.

(3) The director of financial management may prescribe reasonable allowances to cover reasonable expenses for meals, coffee, and light refreshment served to elective and appointive officials and state employees regardless of travel status at a meeting where: (a) The purpose of the meeting is to conduct official state business or to provide formal training to state employees or

state officials; (b) the meals, coffee, or light refreshment are an integral part of the meeting or training session; (c) the meeting or training session takes place away from the employee's or official's regular workplace; and (d) the agency head or authorized designee approves payments in advance for the meals, coffee, or light refreshment. In order to prevent abuse, the director may regulate such allowances and prescribe additional conditions for claiming the allowances.

(4) Upon approval of the agency head or authorized designee, an agency may serve coffee or light refreshments at a meeting where: (a) The purpose of the meeting is to conduct state business or to provide formal training that benefits the state; and (b) the coffee or light refreshment is an integral part of the meeting or training session. The director of financial management shall adopt requirements necessary to prohibit abuse of the authority authorized in this subsection.

(5) The schedule of allowances prescribed by the director under the terms of this section and any subsequent increases in any maximum allowance or special allowances for areas of higher than usual costs shall be reported to the ways and means committees of the house of representatives and the senate at each regular session of the legislature. [1990 c 30 § 1; 1983 1st ex.s. c 29 § 1; 1979 c 151 § 83; 1977 ex.s. c 312 § 1; 1975-'76 2nd ex.s. c 34 § 94; 1970 ex.s. c 34 § 1; 1965 ex.s. c 77 § 1; 1965 c 8 § 43.03.050. Prior: 1961 c 220 § 1; 1959 c 194 § 1; 1953 c 259 § 1; 1949 c 17 § 1; 1943 c 86 § 1; Rem. Supp. 1949 § 10981-1.]

Effective date—Construction—1977 ex.s. c 312: "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 except that any new schedule of allowances under either RCW 43.03.050 and 43.03.060 as now or hereafter amended shall not be effective until July 1, 1977 or later." [1977 ex.s. c 312 § 5.]

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

43.03.060 Mileage allowance. (1) Whenever it becomes necessary for elective or appointive officials or employees of the state to travel away from their designated posts of duty while engaged on official business, and it is found to be more advantageous or economical to the state that travel be by a privately-owned vehicle rather than a common carrier or a state-owned or operated vehicle, a mileage rate established by the director of financial management shall be allowed. The mileage rate established by the director shall not exceed any rate set by the United States treasury department above which the substantiation requirements specified in Treasury Department Regulations section 1.274-5T(a)(1), as now law or hereafter amended, will apply.

(2) The director of financial management may prescribe and regulate the specific mileage rate or other allowance for the use of privately-owned vehicles or common carriers on official business and the conditions under which reimbursement of transportation costs may be allowed. The reimbursement or other payment for transportation expenses of any employee or appointive

official of the state shall be based on the method deemed most advantageous or economical to the state.

(3) The mileage rate established by the director of financial management pursuant to this section and any subsequent changes thereto shall be reported to the ways and means committees of the house of representatives and the senate at each regular session of the legislature. [1990 c 30 § 2; 1983 1st ex.s. c 29 § 2; 1979 c 151 § 84; 1977 ex.s. c 312 § 2; 1975-'76 2nd ex.s. c 34 § 95; 1974 ex.s. c 157 § 1; 1967 ex.s. c 16 § 4; 1965 c 8 § 43.03-.060. Prior: 1949 c 17 § 2; 1943 c 86 § 2; Rem. Supp. 1949 § 10981-2.]

Effective date—Construction—1977 ex.s. c 312: See note following RCW 43.03.050.

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

Chapter 43.06 GOVERNOR

Sections

43.06.010 General powers and duties.

43.06.010 General powers and duties. In addition to those prescribed by the Constitution, the governor may exercise the powers and perform the duties prescribed in this and the following sections:

(1) The governor shall supervise the conduct of all executive and ministerial offices;

(2) The governor shall see that all offices are filled, and the duties thereof performed, or in default thereof, apply such remedy as the law allows; and if the remedy is imperfect, acquaint the legislature therewith at its next session;

(3) The governor shall make the appointments and supply the vacancies mentioned in this title;

(4) The governor is the sole official organ of communication between the government of this state and the government of any other state or territory, or of the United States;

(5) Whenever any suit or legal proceeding is pending against this state, or which may affect the title of this state to any property, or which may result in any claim against the state, the governor may direct the attorney general to appear on behalf of the state, and report the same to the governor, or to any grand jury designated by the governor, or to the legislature when next in session;

(6) The governor may require the attorney general or any prosecuting attorney to inquire into the affairs or management of any corporation existing under the laws of this state, or doing business in this state, and report the same to the governor, or to any grand jury designated by the governor, or to the legislature when next in session;

(7) The governor may require the attorney general to aid any prosecuting attorney in the discharge of his duties;

(8) The governor may offer rewards, not exceeding one thousand dollars in each case, payable out of the

state treasury, for information leading to the apprehension of any person convicted of a felony who has escaped from a state correctional institution or for information leading to the arrest of any person who has committed or is charged with the commission of a felony;

(9) The governor shall perform such duties respecting fugitives from justice as are prescribed by law;

(10) The governor shall issue and transmit election proclamations as prescribed by law;

(11) The governor may require any officer or board to make, upon demand, special reports to the governor, in writing;

(12) The governor may, after finding that a public disorder, disaster, energy emergency, or riot exists within this state or any part thereof which affects life, health, property, or the public peace, proclaim a state of emergency in the area affected, and the powers granted the governor during a state of emergency shall be effective only within the area described in the proclamation;

(13) The governor shall, when appropriate, submit to the select joint committee created by RCW 43.131.120, lists of state agencies, as defined by RCW 43.131.030, which agencies might appropriately be scheduled for termination by a bill proposed by the select joint committee;

(14) The governor may, after finding that there exists within this state an imminent danger of infestation of plant pests as defined in RCW 17.24.007 or plant diseases which seriously endangers the agricultural or horticultural industries of the state of Washington, or which seriously threatens life, health, or economic well-being, order emergency measures to prevent or abate the infestation or disease situation, which measures, after thorough evaluation of all other alternatives, may include the aerial application of pesticides. [1991 c 257 § 22; 1982 c 153 § 1; 1979 ex.s. c 53 § 4; 1977 ex.s. c 289 § 15; 1975-'76 2nd ex.s. c 108 § 25; 1969 ex.s. c 186 § 8; 1965 c 8 § 43.06.010. Prior: 1890 p 627 § 1; RRS § 10982.]

Severability—Effective date—1982 c 153: See notes following RCW 17.24.200.

Severability—1979 ex.s. c 53: See RCW 10.85.900.

Severability—1977 ex.s. c 289: See RCW 43.131.901.

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

Rewards by county legislative authorities: Chapter 10.85 RCW.

Chapter 43.07 SECRETARY OF STATE

Sections

43.07.120	Fees.
43.07.130	Secretary of state's revolving fund—Publication fees authorized, disposition.
43.07.140	Materials specifically authorized to be printed and distributed.
43.07.190	Use of a summary face sheet or cover sheet with the filing of certain documents authorized.
43.07.220	Oral history program.
43.07.230	Oral history advisory committee—Members.
43.07.240	Oral history advisory committee—Duties.

43.07.120 Fees. (1) The secretary of state shall collect the fees herein prescribed for the secretary of state's official services:

(a) For a copy of any law, resolution, record, or other document or paper on file in the secretary's office for which no other fee is provided, fifty cents per page for the first ten pages and twenty-five cents per page for each additional page;

(b) For any certificate under seal, five dollars;

(c) For filing and recording trademark, fifty dollars;

(d) For each deed or patent of land issued by the governor, if for one hundred and sixty acres of land, or less, one dollar, and for each additional one hundred and sixty acres, or fraction thereof, one dollar;

(e) For recording miscellaneous records, papers, or other documents, five dollars for filing each case.

(2) The secretary of state may adopt rules under chapter 34.05 RCW establishing reasonable fees for the following services rendered under Title 23B RCW, chapter 18.100, 23.86, 23.90, 24.03, 24.06, 24.12, 24.20, 24.24, 24.28, 24.36, or 25.10 RCW:

(a) Any service rendered in-person at the secretary of state's office;

(b) Any expedited service;

(c) The electronic transmittal of documents;

(d) The providing of information by microfiche or other reduced-format compilation;

(e) The handling of checks or drafts for which sufficient funds are not on deposit;

(f) The resubmission of documents previously submitted to the secretary of state where the documents have been returned to the submitter to make such documents conform to the requirements of the applicable statute;

(g) The handling of telephone requests for information; and

(h) Special search charges.

(3) To facilitate the collection of fees, the secretary of state may establish accounts for deposits by persons who may frequently be assessed such fees to pay the fees as they are assessed. The secretary of state may make whatever arrangements with those persons as may be necessary to carry out this section.

(4) No member of the legislature, state officer, justice of the supreme court, judge of the court of appeals, or judge of the superior court shall be charged for any search relative to matters pertaining to the duties of his or her office; nor may such official be charged for a certified copy of any law or resolution passed by the legislature relative to his or her official duties, if such law has not been published as a state law. [1991 c 72 § 53; 1989 c 307 § 39; 1982 c 35 § 187; 1971 c 81 § 107; 1965 c 8 § 43.07.120. Prior: 1959 c 263 § 5; 1907 c 56 § 1; 1903 c 151 § 1; 1893 c 130 § 1; RRS § 10993.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

43.07.130 Secretary of state's revolving fund—Publication fees authorized, disposition. There is created within the state treasury a revolving fund, to be known as the "secretary of state's revolving fund," which shall be used by the office of the secretary of state to defray

the costs of printing, reprinting, or distributing printed matter authorized by law to be issued by the office of the secretary of state, and any other cost of carrying out the functions of the secretary of state under Title 23B RCW, or chapters 18.100, 23.86, 23.90, 24.03, 24.06, 24.12, 24.20, 24.24, 24.28, 24.36, or 25.10 RCW.

The secretary of state is hereby authorized to charge a fee for such publications in an amount which will compensate for the costs of printing, reprinting, and distributing such printed matter. Fees recovered by the secretary of state under RCW 43.07.120(2), 23B.01.220(1)(e), (3), and (4), 23B.18.050, 24.03.410, 24.06.455, or 46.64.040, and such other moneys as are expressly designated for deposit in the secretary of state's revolving fund shall be placed in the secretary of state's revolving fund. [1991 c 72 § 54; 1989 c 307 § 40; 1982 c 35 § 188; 1973 1st ex.s. c 85 § 1; 1971 ex.s. c 122 § 1.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Application—1989 c 307: See RCW 23.86.900.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

43.07.140 Materials specifically authorized to be printed and distributed. The secretary of state is hereby specifically authorized to print, reprint, and distribute the following materials:

- (1) Lists of active corporations;
- (2) The provisions of Title 23 RCW;
- (3) The provisions of Title 23B RCW;
- (4) The provisions of Title 24 RCW;
- (5) The provisions of chapter 25.10 RCW;
- (6) The provisions of Title 29 RCW;
- (7) The provisions of chapter 18.100 RCW;
- (8) The provisions of chapter 19.77 RCW;
- (9) The provisions of chapter 43.07 RCW;
- (10) The provisions of the Washington state Constitution;
- (11) The provisions of chapters 40.14, 40.16, and 40.20 RCW, and any statutes, rules, schedules, indexes, guides, descriptions, or other materials related to the public records of state or local government or to the state archives; and
- (12) Rules and informational publications related to the statutory provisions set forth above. [1991 c 72 § 55; 1982 c 35 § 189; 1973 1st ex.s. c 85 § 2.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

43.07.190 Use of a summary face sheet or cover sheet with the filing of certain documents authorized. Where the secretary of state determines that a summary face sheet or cover sheet would expedite review of any documents made under Title 23B RCW, or chapter 18.100, 23.86, 23.90, 24.03, 24.06, 24.12, 24.20, 24.24, 24.36, or 25.10 RCW, the secretary of state may require the use of a summary face sheet or cover sheet that accurately reflects the contents of the attached document. The secretary of state may, by rule adopted under chapter 34.05 RCW, specify the required contents of any

summary face sheet and the type of document or documents in which the summary face sheet will be required, in addition to any other filing requirements which may be applicable. [1991 c 72 § 56; 1989 c 307 § 41; 1982 c 35 § 193.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Application—1989 c 307: See RCW 23.86.900.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

43.07.220 Oral history program. The secretary of state, at the direction of the oral history advisory committee, shall administer and conduct a program to record and document oral histories of current and former members and staff of the Washington state legislature, current and former state government officials and personnel, and other citizens who have participated in the political history of Washington state. The secretary of state shall contract with independent oral historians and through the history departments of the state universities to interview and record oral histories. The tapes and tape transcripts shall be indexed and made available for research and reference through the state archives. The transcripts, together with current and historical photographs, may be published for distribution to libraries and for sale to the general public. [1991 c 237 § 1.]

Effective date—1991 c 237: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect on July 1, 1991." [1991 c 237 § 6.]

43.07.230 Oral history advisory committee—Members. An oral history advisory committee is created, which shall consist of the following individuals:

- (1) Four members of the house of representatives, two from each of the two largest caucuses of the house, appointed by the speaker of the house of representatives;
- (2) Four members of the senate, two from each of the two largest caucuses of the senate, appointed by the president of the senate;
- (3) The chief clerk of the house of representatives;
- (4) The secretary of the senate; and
- (5) The secretary of state. [1991 c 237 § 2.]

Effective date—1991 c 237: See note following RCW 43.07.220.

43.07.240 Oral history advisory committee—Duties. The oral history advisory committee shall have the following responsibilities:

- (1) To select appropriate oral history interview subjects;
- (2) To select transcripts or portions of transcripts, and related historical material, for publication;
- (3) To advise the secretary of state on the format and length of individual interview series and on appropriate issues and subjects for related series of interviews;
- (4) To advise the secretary of state on the appropriate subjects, format, and length of interviews and on the

process for conducting oral history interviews with subjects currently serving in the Washington state legislature;

(5) To advise the secretary of state on joint programs and activities with state universities, colleges, museums, and other groups conducting oral histories; and

(6) To advise the secretary of state on other aspects of the administration of the oral history program and on the conduct of individual interview projects. [1991 c 237 § 3.]

Effective date—1991 c 237: See note following RCW 43.07.220.

Chapter 43.08 STATE TREASURER

Sections

43.08.190 State treasurer's service fund—Creation—Purpose.
43.08.250 Public safety and education account—Use.

43.08.190 State treasurer's service fund—Creation—Purpose. There is hereby created a fund within the state treasury to be known as the "state treasurer's service fund". Such fund shall be used solely for the payment of costs and expenses incurred in the operation and administration of the state treasurer's office.

Moneys shall be allocated monthly and placed in the state treasurer's service fund equivalent to a maximum of one percent of the trust and treasury average daily cash balances from the earnings generated under the authority of RCW 43.79A.040 and 43.84.080 other than earnings generated from investment of balances in funds and accounts specified in RCW *43.79.040(2)(b) or 43.84.092(2)(b). The allocation shall precede the distribution of the remaining earnings as prescribed under RCW 43.79A.040 and 43.84.092. The state treasurer shall establish a uniform allocation rate based on the appropriations for the treasurer's office. [1991 1st sp.s. c 13 § 83; 1985 c 405 § 506; 1973 c 27 § 2.]

***Reviser's note:** The reference to RCW 43.79.040(2)(b) is incorrect. RCW 43.79A.040(2)(b) was apparently intended.

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Severability—1985 c 405: See note following RCW 9.46.100.

43.08.250 Public safety and education account—Use. The money received by the state treasurer from fees, fines, forfeitures, penalties, reimbursements or assessments by any court organized under Title 3 or 35 RCW, or chapter 2.08 RCW, shall be deposited in the public safety and education account which is hereby created in the state treasury. The legislature shall appropriate the funds in the account to promote traffic safety education, highway safety, criminal justice training, crime victims' compensation, judicial education, the judicial information system, winter recreation parking, and state game programs. During the fiscal biennium ending June 30, 1993, the legislature may appropriate moneys from the public safety and education account for the purposes of local jail population data collection under RCW 10.98.130, the department of corrections'

county partnership program under RCW 72.09.300, the treatment alternatives to street crimes program, the criminal litigation unit of the attorney general's office, and contracts with county officials to provide support enforcement services. [1991 1st sp.s. c 16 § 919; 1991 1st sp.s. c 13 § 25; 1985 c 57 § 27; 1984 c 258 § 338.]

Reviser's note: This section was amended by 1991 1st sp.s. c 13 § 25 and by 1991 1st sp.s. c 16 § 919, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—1991 1st sp.s. c 16: See notes following RCW 9.46.100.

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

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

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

Public safety and education assessment: RCW 3.62.090.

Chapter 43.09 STATE AUDITOR

Sections

43.09.240 Division of municipal corporations—Public officers and employees—Duty to account and report—Removal from office—Deposit of collections.
43.09.260 Division of municipal corporations—Examination of taxing districts—Reports—Action by attorney general. (Effective January 1, 1992.)
43.09.270 Division of municipal corporations—Expense of division, how paid.

43.09.240 Division of municipal corporations—Public officers and employees—Duty to account and report—Removal from office—Deposit of collections. Every public officer and employee shall keep all accounts of his office in the form prescribed and make all reports required by the state auditor. Any public officer or employee who refuses or wilfully neglects to perform such duties shall be subject to removal from office in an appropriate proceeding for that purpose brought by the attorney general or by any prosecuting attorney.

Every public officer and employee, whose duty it is to collect or receive payments due or for the use of the public shall deposit such moneys collected or received by him or her with the treasurer of the taxing district once every twenty-four consecutive hours. The treasurer may in his or her discretion grant an exception where such daily transfers would not be administratively practical or feasible.

In case a public officer or employee collects or receives funds for the account of a taxing district of which he or she is an officer or employee, the treasurer shall, by Friday of each week, pay to the proper officer of the taxing district for the account of which the collection was made or payment received, the full amount collected or received during the current week for the account of the district. [1991 c 245 § 13; 1965 c 8 § 43.09.240. Prior: 1963 c 209 § 2; 1911 c 30 § 1; 1909 c 76 § 6;

RRS § 9956; prior: 1890 p 638 § 11; Code 1881 § 2577; 1854 p 411 § 7.]

43.09.260 Division of municipal corporations—Examination of taxing districts—Reports—Action by attorney general. (Effective January 1, 1992.) The state auditor, the chief examiner, and every state examiner shall have power by himself or herself or by any person legally appointed to perform the service, to examine into all financial affairs of every public office and officer.

The examination of the financial affairs of all taxing districts shall be made at such reasonable, periodic intervals as the state auditor shall determine. However, an examination of the financial affairs of all taxing districts shall be made at least once in every three years, and an examination of individual local government health and welfare benefit plans and local government self-insurance programs shall be made at least once every two years. The term "taxing districts" for purposes of RCW 43.09.190 through 43.09.285 includes but is not limited to all counties, cities, and other political subdivisions, municipal corporations, and quasi-municipal corporations, however denominated.

The state auditor shall establish a schedule to govern the auditing of taxing districts which shall include: A designation of the various classifications of taxing districts; a designation of the frequency for auditing each type of taxing district; and a description of events which cause a more frequent audit to be conducted.

On every such examination, inquiry shall be made as to the financial condition and resources of the taxing district; whether the Constitution and laws of the state, the ordinances and orders of the taxing district, and the requirements of the division of municipal corporations have been properly complied with; and into the methods and accuracy of the accounts and reports.

The state auditor, his or her deputies, every state examiner and every person legally appointed to perform such service, may issue subpoenas and compulsory process and direct the service thereof by any constable or sheriff, compel the attendance of witnesses and the production of books and papers before him or her at any designated time and place, and may administer oaths.

When any person summoned to appear and give testimony neglects or refuses so to do, or neglects or refuses to answer any question that may be put to him or her touching any matter under examination, or to produce any books or papers required, the person making such examination shall apply to a superior court judge of the proper county to issue a subpoena for the appearance of such person before him or her; and the judge shall order the issuance of a subpoena for the appearance of such person forthwith before him to give testimony; and if any person so summoned fails to appear, or appearing, refuses to testify, or to produce any books or papers required, he or she shall be subject to like proceedings and penalties for contempt as witnesses in the superior court. Willful false swearing in any such examination shall be perjury and punishable as such.

A report of such examination shall be made in triplicate, one copy to be filed in the office of the state auditor, one in the auditing department of the taxing district reported upon, and one in the office of the attorney general. If any such report discloses malfeasance, misfeasance, or nonfeasance in office on the part of any public officer or employee, within thirty days from the receipt of his copy of the report, the attorney general shall institute, in the proper county, such legal action as is proper in the premises by civil process and prosecute the same to final determination to carry into effect the findings of the examination.

It shall be unlawful for the county commissioners or any board or officer to make a settlement or compromise of any claim arising out of such malfeasance, misfeasance, or nonfeasance, or any action commenced therefor, or for any court to enter upon any compromise or settlement of such action, without the written approval and consent of the attorney general and the state auditor. [1991 1st sp.s. c 30 § 26; 1979 c 71 § 1; 1965 c 8 § 43.09.260. Prior: 1909 c 76 § 8; RRS § 9958.]

Effective date, implementation, application—Severability—1991 1st sp.s. c 30: See RCW 48.62.900 and 48.62.901.
School district budgeting violations not to affect duties of attorney general under RCW 43.09.260: RCW 28A.505.150.

43.09.270 Division of municipal corporations—Expense of division, how paid. The expense of maintaining and operating the division shall be paid out of the state general fund: PROVIDED, That those expenses directly related to the prescribing of accounting systems, training, maintenance of working capital including reserves for late and uncollectable accounts and necessary adjustments to billings, and field audit supervision, shall be considered as expenses of auditing public accounts within the meaning of RCW 43.09.280 and 43.09.282, and shall be prorated for that purpose equally among all entities directly affected by such service.

During the fiscal biennium ending June 30, 1993, the expense of maintaining and operating the division of municipal corporations shall be paid from the municipal revolving fund under RCW 43.09.282. [1991 1st sp.s. c 16 § 920; 1982 c 206 § 1; 1965 c 8 § 43.09.270. Prior: 1963 c 209 § 4; 1911 c 30 § 1; 1909 c 76 § 10; RRS § 9960.]

Severability—Effective date—1991 1st sp.s. c 16: See notes following RCW 9.46.100.

Chapter 43.10 ATTORNEY GENERAL

Sections

- 43.10.260 Criminal profiteering—Assistance to local officials.
43.10.270 Criminal profiteering—Asset recovery.

43.10.260 Criminal profiteering—Assistance to local officials. The attorney general may: (1) Assist local law enforcement officials in the development of cases arising under the criminal profiteering laws with special emphasis on narcotics related cases; (2) assist local prosecutors in the litigation of criminal profiteering or

drug asset forfeiture cases, or, at the request of a prosecutor's office, litigate such cases on its behalf; and (3) conduct seminars and training sessions on prosecution of criminal profiteering cases and drug asset forfeiture cases. [1991 c 345 § 2.]

Findings—1991 c 345: "The legislature finds that drug asset forfeiture and criminal profiteering laws allow law enforcement officials and the courts to strip drug dealers and other successful criminals of the wealth they have acquired from their crimes and the assets they have used to facilitate those crimes. These laws are rarely used by prosecutors, however, because of the difficulty in identifying profiteering and the assets that criminals may have as a result of their crimes. It is the intent of the legislature to provide assistance to local law enforcement officials and state agencies to seize the assets of criminals and the proceeds of their profiteering." [1991 c 345 § 1.]

43.10.270 Criminal profiteering—Asset recovery. All assets recovered pursuant to RCW 43.10.260 shall be distributed in the following manner: (1) For drug asset forfeitures, pursuant to the provisions of RCW 69.50.505; and (2) for criminal profiteering cases, pursuant to the provisions of RCW 9A.82.100. [1991 c 345 § 3.]

Findings—1991 c 345: See note following RCW 43.10.260.

Chapter 43.17

ADMINISTRATIVE DEPARTMENTS AND AGENCIES—GENERAL PROVISIONS

Sections

43.17.065	Expeditious exercise of power to issue permits, licenses, certifications, contracts, and grants—Cooperation.
43.17.205	Purchase of works of art—Interagency reimbursement for expenditure by visual arts program.
43.17.210	Purchase of works of art—Procedure.
43.17.240	Debts owed to the state—Interest rate.
43.17.250	County-wide planning policy incentives.
43.17.260	Commission for efficiency and accountability—Generally. (Expires December 31, 1995.)
43.17.270	Commission for efficiency and accountability—Duties. (Expires December 31, 1995.)
43.17.280	Commission for efficiency and accountability—Review, recommendations, reports. (Expires December 31, 1995.)
43.17.290	Commission for efficiency and accountability—Funding, staffing. (Expires December 31, 1995.)
43.17.300	Commission for efficiency and accountability—Contracting authority. (Expires December 31, 1995.)

43.17.065 Expeditious exercise of power to issue permits, licenses, certifications, contracts, and grants—Cooperation. (1) Where power is vested in a department to issue permits, licenses, certifications, contracts, grants, or otherwise authorize action on the part of individuals, businesses, local governments, or public or private organizations, such power shall be exercised in an expeditious manner. All departments with such power shall cooperate with officials of the business assistance center of the department of trade and economic development, and any other state officials, when such officials request timely action on the part of the issuing department.

(2) After August 1, 1991, any agency to which subsection (1) of this section applies shall, with regard to any permits or other actions that are necessary for economic development in timber impact areas, as defined in

RCW 43.31.601, respond to any completed application within forty-five days of its receipt; any response, at a minimum, shall include:

(a) The specific steps that the applicant needs to take in order to have the application approved; and

(b) The assistance that will be made available to the applicant by the agency to expedite the application process.

(3) The agency timber task force established in RCW 43.31.621 shall oversee implementation of this section.

(4) Each agency shall define what constitutes a completed application and make this definition available to applicants. [1991 c 314 § 28; 1990 1st ex.s. c 17 § 77.]

Findings—1991 c 314: See note following RCW 43.31.601.

Intent—1990 1st ex.s. c 17: See note following RCW 43.210.010.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

43.17.205 Purchase of works of art—Interagency reimbursement for expenditure by visual arts program. The funds allocated under RCW 43.17.200, 28A.335.210, and 28B.10.025 shall be subject to interagency reimbursement for expenditure by the visual arts program of the Washington state arts commission when the particular law providing for the appropriation becomes effective. For appropriations which are dependent upon the sale of bonds, the amount or proportionate amount of the moneys under RCW 43.17.200, 28A.335.210, and 28B.10.025 shall be subject to interagency reimbursement for expenditure by the visual arts program of the Washington state arts commission thirty days after the sale of a bond or bonds. [1990 c 33 § 574; 1983 c 204 § 3.]

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

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

43.17.210 Purchase of works of art—Procedure. The Washington state arts commission shall determine the amount to be made available for the purchase of art in consultation with the agency, except where another person or agency is specified under RCW 43.19.455, 28A.335.210, or 28B.10.025, and payments therefor shall be made in accordance with law. The designation of projects and sites, selection, contracting, purchase, commissioning, reviewing of design, execution and placement, acceptance, maintenance, and sale, exchange, or disposition of works of art shall be the responsibility of the Washington state arts commission in consultation with the directors of the state agencies. However, the costs to carry out the Washington state arts commission's responsibility for maintenance shall not be funded from the moneys referred to in RCW 43.17.200, 43.19.455, 28A.335.210, or 28B.10.025, but shall be contingent upon adequate appropriations being made for that purpose. [1990 c 33 § 575; 1983 c 204 § 5.]

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

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

43.17.240 Debts owed to the state—Interest rate. Interest at the rate of one percent per month, or fraction thereof, shall accrue on debts owed to the state, starting on the date the debts become past due. This section does not apply to: (1) Any instance where such interest rate would conflict with the provisions of a contract or with the provisions of any other law; or (2) debts to be paid by other governmental units. The office of financial management may adopt rules specifying circumstances under which state agencies may waive interest, such as when assessment or collection of interest would not be cost-effective. This section does not affect any authority of the state to charge or collect interest under any other law on a debt owed to the state by a governmental unit. This section applies only to debts which become due on or after July 28, 1991. [1991 c 85 § 2.]

43.17.250 County-wide planning policy incentives. Whenever a state agency is considering awarding grants or loans for a county, city, or town to finance public facilities, it shall consider whether the county, city, or town that is requesting the grant or loan is a party to a county-wide planning policy under RCW 36.70A.210 relating to the type of public facility for which the grant or loan is sought, and shall accord additional preference to the county, city, or town if such county-wide planning policy exists. Whenever a state agency is considering awarding grants or loans to a special district for public facilities, it shall consider whether the county, city, or town in whose planning jurisdiction the proposed facility is located is a party to a county-wide planning policy under RCW 36.70A.210 relating to the type of public facility for which the grant or loan is sought. [1991 1st sp.s. c 32 § 25.]

Reviser's note: 1991 1st sp.s. c 32 directed that this section be added to chapter 43.01 RCW. The placement appears inappropriate and the section has been codified as part of chapter 43.17 RCW.

Section headings not law—1991 1st sp.s. c 32: See RCW 36.70A.902.

43.17.260 Commission for efficiency and accountability—Generally. (Expires December 31, 1995.) (1) There is hereby created a temporary commission to be known as the Washington state commission for efficiency and accountability in government, hereafter referred to as the commission.

(2) The commission shall consist of fourteen members as follows:

(a) Six members appointed by the governor including but not limited to representatives from private sector business and industry, labor unions, and public interest organizations;

(b) Three members appointed jointly by the president of the senate and speaker of the house including but not limited to representatives from private sector business and industry, labor unions, and public interest organizations;

(c) One representative from each of the four legislative caucuses to be appointed by the president of the senate and the speaker of the house; and

(d) The governor shall be a member and the chair of the commission.

The vice-chair shall be selected by the commission.

(3) Nonlegislative members shall be reimbursed for travel expenses for attending meetings of the commission as provided for in RCW 43.03.050 and 43.03.060. Legislative members shall be reimbursed for travel expenses for attending meetings of the commission as provided for in RCW 44.04.120. [1987 c 480 § 1.]

Expiration date—1991 c 53; 1987 c 480: "This act shall expire December 31, 1995." [1991 c 53 § 1; 1987 c 480 § 6.]

43.17.270 Commission for efficiency and accountability—Duties. (Expires December 31, 1995.) The commission shall develop recommendations for legislative and executive consideration that will:

(1) Increase the efficiency and effectiveness of state government programs and reduce costs;

(2) Enhance executive accountability and the organizational soundness of state government;

(3) Enhance legislative oversight and program accountability; and

(4) Improve managerial competence and work force productivity. [1987 c 480 § 2.]

Expiration date—1991 c 53; 1987 c 480: See note following RCW 43.17.260.

43.17.280 Commission for efficiency and accountability—Review, recommendations, reports. (Expires December 31, 1995.) To carry out the provisions of RCW 43.17.270, the commission shall:

(1) Prepare a list of selected programs funded by the state that will be subject to review by the commission. The list shall include programs that have a major fiscal impact on the state and where the commission determines that operational and organizational improvements are feasible. The reviews shall concentrate on identifying improvements that will result in increased program efficiency and effectiveness and reduced costs, greater accountability to the general public, increased information and data relative to governmental expenditures, and increased managerial competence and work force productivity.

(2) Develop a four-year plan for the orderly review of each program identified under subsection (1) of this section. The plan shall contain a timetable for the completion of each program review and an estimate of the resources needed to carry out the reviews. The plan shall be updated annually.

(3) Secure private sector financial and other support for the conduct of the reviews.

(4) Establish the scope of program reviews, select review teams and direct those teams to conduct the program reviews identified by the commission. The review teams shall report to the commission their findings and recommendations for organizational and operational improvements.

(5) Decide upon recommendations for executive action or legislation necessary to implement the operational or organizational improvements developed by program review teams.

(6) Submit the following reports to the legislature:
 (a) By December 31, 1987, a four-year plan required by subsection (2) of this section;
 (b) Upon completion of each program review, its recommendations for operational and organizational improvements for the program reviewed. The report shall include estimates of savings which may result from recommended legislative or executive action.
 (c) By December 31, 1988, a report summarizing recommendations of the commission for legislative and executive actions to accomplish operational and organizational improvements identified in completed program reviews and any executive action initiated as a result of findings of a program review. Thereafter, the commission shall report to the legislature annually, no later than December 31, on its progress toward completing the four-year review plan and on its recommendations for operational and organizational improvements in state government. [1987 c 480 § 3.]

Expiration date—1991 c 53; 1987 c 480: See note following RCW 43.17.260.

43.17.290 Commission for efficiency and accountability—Funding, staffing. (Expires December 31, 1995.) (1) It is the intent of the legislature that the program review activities of the commission be funded, to the extent practicable, by contributions received from the private sector. The office of financial management and the legislature shall provide staff as required by the commission for developing the plan for proper reviews and undertaking such reviews. To the extent permitted by law, all agencies of the state shall cooperate fully with the commission in carrying out its duties under RCW 43.17.260 through 43.17.300.

(2) The commission may receive and expend gifts, grants, and endowments from private sources to carry out the purposes of RCW 43.17.260 through 43.17.300. [1987 c 480 § 4.]

Expiration date—1991 c 53; 1987 c 480: See note following RCW 43.17.260.

43.17.300 Commission for efficiency and accountability—Contracting authority. (Expires December 31, 1995.) The commission may contract for such services as are necessary to supplement the staff as provided in RCW 43.17.290. [1987 c 480 § 5.]

Expiration date—1991 c 53; 1987 c 480: See note following RCW 43.17.260.

Chapter 43.19

DEPARTMENT OF GENERAL ADMINISTRATION

Sections

- 43.19.190 State purchasing and material control director—Powers and duties.
- 43.19.191 Surplus personal property—Sale, exchange—Authority—Procedure—Restrictions—Exemption.
- 43.19.192 Surplus personal property—Donation to emergency shelters.
- 43.19.1923 Central stores revolving fund.
- 43.19.455 Purchase of works of art—Procedure.
- 43.19.537 Repealed.

- 43.19.538 Purchase of products containing recycled material—Preference—Specifications and rules—Review.
- 43.19.554 State-wide management of state-owned vehicles—Director's powers and duties.
- 43.19.610 Motor vehicle transportation service—Motor transport account—Sources—Disbursements.
- 43.19.637 Clean-fuel vehicles—Purchasing requirements.

43.19.190 State purchasing and material control director—Powers and duties. The director of general administration, through the state purchasing and material control director, shall:

(1) Establish and staff such administrative organizational units within the division of purchasing as may be necessary for effective administration of the provisions of RCW 43.19.190 through 43.19.1939;

(2) Purchase all material, supplies, services, and equipment needed for the support, maintenance, and use of all state institutions, colleges, community colleges, technical colleges, college districts, and universities, the offices of the elective state officers, the supreme court, the court of appeals, the administrative and other departments of state government, and the offices of all appointive officers of the state: PROVIDED, That the provisions of RCW 43.19.190 through 43.19.1937 do not apply in any manner to the operation of the state legislature except as requested by said legislature: PROVIDED, That primary authority for the purchase of specialized equipment, instructional, and research material for their own use shall rest with the colleges, community colleges, and universities: PROVIDED FURTHER, That universities operating hospitals and the state purchasing and material control director, as the agent for state hospitals as defined in RCW 72.23.010, and for health care programs provided in state correctional institutions as defined in RCW 72.65.010(3) and veterans' institutions as defined in RCW 72.36.010 and 72.36.070, may make purchases for hospital operation by participating in contracts for materials, supplies, and equipment entered into by cooperative hospital service organizations as defined in section 501(e) of the Internal Revenue Code, or its successor: PROVIDED FURTHER, That primary authority for the purchase of materials, supplies, and equipment for resale to other than public agencies shall rest with the state agency concerned: PROVIDED FURTHER, That authority to purchase services as included herein does not apply to personal services as defined in chapter 39.29 RCW, unless such organization specifically requests assistance from the division of purchasing in obtaining personal services and resources are available within the division to provide such assistance: PROVIDED FURTHER, That the authority for the purchase of insurance and bonds shall rest with the risk manager under RCW 43.19.1935 as now or hereafter amended;

(3) Provide the required staff assistance for the state supply management advisory board through the division of purchasing;

(4) Have authority to delegate to state agencies authorization to purchase or sell, which authorization shall specify restrictions as to dollar amount or to specific types of material, equipment, services, and supplies:

PROVIDED, That acceptance of the purchasing authorization by a state agency does not relieve such agency from conformance with other sections of RCW 43.19.190 through 43.19.1939, as now or hereafter amended, or from policies established by the director after consultation with the state supply management advisory board: PROVIDED FURTHER, That delegation of such authorization to a state agency, including an educational institution, to purchase or sell material, equipment, services, and supplies shall not be granted, or otherwise continued under a previous authorization, if such agency is not in substantial compliance with overall state purchasing and material control policies as established herein;

(5) Contract for the testing of material, supplies, and equipment with public and private agencies as necessary and advisable to protect the interests of the state;

(6) Prescribe the manner of inspecting all deliveries of supplies, materials, and equipment purchased through the division;

(7) Prescribe the manner in which supplies, materials, and equipment purchased through the division shall be delivered, stored, and distributed;

(8) Provide for the maintenance of a catalogue library, manufacturers' and wholesalers' lists, and current market information;

(9) Provide for a commodity classification system and may, in addition, provide for the adoption of standard specifications after receiving the recommendation of the supply management advisory board;

(10) Provide for the maintenance of inventory records of supplies, materials, and other property;

(11) Prepare rules and regulations governing the relationship and procedures between the division of purchasing and state agencies and vendors;

(12) Publish procedures and guidelines for compliance by all state agencies, including educational institutions, which implement overall state purchasing and material control policies;

(13) Conduct periodic visits to state agencies, including educational institutions, to determine if statutory provisions and supporting purchasing and material control policies are being fully implemented, and based upon such visits, take corrective action to achieve compliance with established purchasing and material control policies under existing statutes when required. [1991 c 238 § 135. Prior: 1987 c 414 § 10; 1987 c 70 § 1; 1980 c 103 § 1; 1979 c 88 § 1; 1977 ex.s. c 270 § 4; 1975-'76 2nd ex.s. c 21 § 2; 1971 c 81 § 110; 1969 c 32 § 3; prior: 1967 ex.s. c 104 § 2; 1967 ex.s. c 8 § 51; 1965 c 8 § 43-.19.190; prior: 1959 c 178 § 1; 1957 c 187 § 1; 1955 c 285 § 12; prior: (i) 1935 c 176 § 21; RRS § 10786-20. (ii) 1921 c 7 § 42; RRS § 10800. (iii) 1955 c 285 § 12; 1921 c 7 § 37, part; RRS § 10795, part.]

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

Severability—1987 c 414: See RCW 39.29.900.

Severability—1980 c 103: "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." [1980 c 103 § 3.]

Construction—1977 ex.s. c 270: See RCW 43.19.19364.

Severability—1975-'76 2nd ex.s. c 21: See note following RCW 43.19.180.

Federal surplus property: Chapter 39.32 RCW.

Institution made goods, supervisor to give preference to: RCW 72.60.190.

Purchase of blind made products and services: Chapter 19.06 RCW.

43.19.1919 Surplus personal property—Sale, exchange—Authority—Procedure—Restrictions—Exemption. Except as provided in RCW 43.19.1920, the division of purchasing shall sell or exchange personal property belonging to the state for which the agency, office, department, or educational institution having custody thereof has no further use, at public or private sale, and cause the moneys realized from the sale of any such property to be paid into the fund from which such property was purchased or, if such fund no longer exists, into the state general fund: PROVIDED, Sales of capital assets may be made by the division of purchasing and a credit established in central stores for future purchases of capital items as provided for in RCW 43.19.190 through 43.19.1939, as now or hereafter amended: PROVIDED FURTHER, That personal property, excess to a state agency, including educational institutions, shall not be sold or disposed of prior to reasonable efforts by the division of purchasing to determine if other state agencies have a requirement for such personal property. Such determination shall follow sufficient notice to all state agencies to allow adequate time for them to make their needs known. Surplus items may be disposed of without prior notification to state agencies if it is determined by the director of general administration to be in the best interest of the state. The division of purchasing shall maintain a record of disposed surplus property, including date and method of disposal, identity of any recipient, and approximate value of the property: PROVIDED, FURTHER, That this section shall not apply to personal property acquired by a state organization under federal grants and contracts if in conflict with special title provisions contained in such grants or contracts.

This section does not apply to property under RCW 27.53.045. [1991 c 216 § 2; 1989 c 144 § 1; 1988 c 124 § 8; 1975-'76 2nd ex.s. c 21 § 11; 1965 c 8 § 43.19-.1919. Prior: 1959 c 178 § 10.]

Findings—1991 c 216: "The legislature finds that (1) there are an increasing number of persons who are unable to meet their basic needs relating to shelter, clothing, and nourishment; (2) there are many non-profit organizations and units of local government that provide shelter and other assistance to these persons but that these organizations are finding it difficult to meet the increasing demand for such assistance; and (3) the numerous agencies and institutions of state government generate a significant quantity of surplus, tangible personal property that would be of great assistance to homeless persons throughout the state. Therefore, the legislature finds that it is in the best interest of the state to provide for the donation of state-owned, surplus, tangible property to assist the homeless in meeting their basic needs." [1991 c 216 § 1.]

Severability—Intent—Application—1988 c 124: See RCW 27.53.901 and notes following RCW 27.53.030.

Severability—1975-'76 2nd ex.s. c 21: See note following RCW 43.19.180.

43.19.1920 Surplus personal property—Donation to emergency shelters. The division of purchasing may

donate state-owned, surplus, tangible personal property to shelters that are: Participants in the department of community development's emergency shelter assistance program; and operated by nonprofit organizations or units of local government providing emergency or transitional housing for homeless persons. A donation may be made only if all of the following conditions have been met:

(1) The division of purchasing has made reasonable efforts to determine if any state agency has a requirement for such personal property and no such agency has been identified. Such determination shall follow sufficient notice to all state agencies to allow adequate time for them to make their needs known;

(2) The agency owning the property has authorized the division of purchasing to donate the property in accordance with this section;

(3) The nature and quantity of the property in question is directly germane to the needs of the homeless persons served by the shelter and the purpose for which the shelter exists and the shelter agrees to use the property for such needs and purposes; and

(4) The director of general administration has determined that the donation of such property is in the best interest of the state. [1991 c 216 § 3.]

Findings—1991 c 216: See note following RCW 43.19.1919.
Emergency shelter assistance program: Chapter 365-120 WAC.

43.19.1923 Central stores revolving fund. There is created within the department of general administration a revolving fund to be known as the central stores revolving fund, which shall be used for the purchase of supplies and equipment handled or rented through central stores, and the payment of salaries, wages, and other costs incidental to the acquisition, operation, and maintenance of the central stores, and other activities connected therewith, which shall include utilities services. Disbursements from the fund for the purchasing and contract administration activities of the division of purchasing within the department are subject to appropriation and allotment procedures under chapter 43.88 RCW. Disbursements for all other activities within the central stores are not subject to appropriation. The fund shall be credited with all receipts from the rental, sale or distribution of supplies, equipment, and services rendered to the various state agencies. Central stores, utilities services, and other activities within the central stores revolving fund shall be treated as separate operating entities for financial and accounting control. Financial records involving the central stores revolving fund shall be designed to provide data for achieving maximum effectiveness and economy of each individual activity within the fund. [1991 1st sp.s. c 16 § 921; 1987 c 504 § 17; 1975-'76 2nd ex.s. c 21 § 12; 1967 ex.s. c 104 § 5; 1965 c 8 § 43.19.1923. Prior: 1959 c 178 § 12.]

Severability—1991 1st sp.s. c 16: See notes following RCW 9.46.100.

Severability—Effective date—1987 c 504: See RCW 43.105.901 and 43.105.902.

Severability—1975-'76 2nd ex.s. c 21: See note following RCW 43.19.180.

43.19.455 Purchase of works of art—Procedure. Except as provided under RCW 43.17.210, the Washington state arts commission shall determine the amount to be made available for the purchase of art under RCW 43.17.200 in consultation with the director of general administration, and payments therefor shall be made in accordance with law. The designation of projects and sites, selection, contracting, purchase, commissioning, reviewing of design, execution and placement, acceptance, maintenance, and sale, exchange, or disposition of works of art shall be the responsibility of the Washington state arts commission in consultation with the director of general administration. However, the costs to carry out the Washington state arts commission's responsibility for maintenance shall not be funded from the moneys referred to under this section, RCW 43.17.200, 28A.335.210, or 28B.10.025, but shall be contingent upon adequate appropriations being made for that purpose. [1990 c 33 § 576; 1983 c 204 § 6; 1974 ex.s. c 176 § 3.]

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

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

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

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

State art collection: RCW 43.46.095.

43.19.537 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.19.538 Purchase of products containing recycled material—Preference—Specifications and rules—Review. (1) The director of general administration, through the state purchasing director, shall develop specifications and adopt rules for the purchase of products which will provide for preferential purchase of products containing recycled material by:

(a) The use of a weighting factor determined by the amount of recycled material in a product, where appropriate and known in advance to potential bidders, to determine the lowest responsible bidder. The actual dollars bid shall be the contracted amount. If the department determines, according to criteria established by rule that the use of this weighting factor does not encourage the use of more recycled material, the department shall consider and award bids without regard to the weighting factor. In making this determination, the department shall consider but not be limited to such factors as adequate competition, economics or environmental constraints, quality, and availability.

(b) Requiring a written statement of the percentage range of recycled content from the bidder providing products containing recycled [material]. The range may be stated in five percent increments.

(2) The director shall develop a directory of businesses that supply products containing significant quantities of recycled materials. This directory may be combined with and made accessible through the data

base of recycled content products to be developed under RCW 43.19A.060.

(3) The director shall encourage all parties using the state purchasing office to purchase products containing recycled materials.

(4) The rules, specifications, and bid evaluation shall be consistent with recycled content standards adopted under RCW 43.19A.020. [1991 c 297 § 5; 1988 c 175 § 2; 1987 c 505 § 26; 1982 c 61 § 2.]

Captions not law—1991 c 297: See RCW 43.19A.900.

Effective date—1988 c 175: See note following RCW 43.19.537.

State purchasing and material control director: RCW 43.19.180.

43.19.554 State-wide management of state-owned vehicles—Director's powers and duties. (1) To carry out the purposes of RCW 43.19.550 through 43.19.558 and 46.08.065, the director of general administration has the following powers and duties:

(a) To develop and implement a state-wide information system to collect, analyze, and disseminate data on the acquisition, operation, management, maintenance, repair, disposal, and replacement of all state-owned passenger motor vehicles. State agencies shall provide the department with such data as is necessary to implement and maintain the system. The department shall provide state agencies with information and reports designed to assist them in achieving efficient and cost-effective management of their passenger motor vehicle operations.

(b) To survey state agencies to identify the location, ownership, and condition of all state-owned fuel storage tanks.

(c) In cooperation with the department of ecology and other public agencies, to prepare a plan and funding proposal for the inspection and repair or replacement of state-owned fuel storage tanks, and for the clean-up of fuel storage sites where leakage has occurred. The plan and funding proposal shall be submitted to the governor no later than December 1, 1989.

(d) To develop and implement a state-wide motor vehicle fuel purchase, distribution, and accounting system to be used by all state agencies and their employees. The director may exempt agencies from participation in the system if the director determines that participation interferes with the statutory duties of the agency.

(e) To establish minimum standards and requirements for the content and frequency of safe driving instruction for state employees operating state-owned passenger motor vehicles, which shall include consideration of employee driving records. In carrying out this requirement, the department shall consult with other agencies that have expertise in this area.

(f) To develop a schedule, after consultation with the state motor vehicle advisory committee and affected state agencies, for state employees to participate in safe driving instruction.

(g) To require all state employees to provide proof of a driver's license recognized as valid under Washington state law prior to operating a state-owned passenger vehicle.

(h) To develop standards for the efficient and economical replacement of all categories of passenger motor

vehicles used by state agencies and provide those standards to state agencies and the office of financial management.

(i) To develop and implement a uniform system and standards to be used for the marking of passenger motor vehicles as state-owned vehicles as provided for in RCW 46.08.065. The system shall be designed to enhance the resale value of passenger motor vehicles, yet ensure that the vehicles are clearly identified as property of the state.

(j) To develop and implement other programs to improve the performance, efficiency, and cost-effectiveness of passenger motor vehicles owned and operated by state agencies.

(k) To consult with state agencies and institutions of higher education in carrying out RCW 43.19.550 through 43.19.558.

(2) The director shall establish an operational unit within the department to carry out subsection (1) of this section. The director shall employ such personnel as are necessary to carry out RCW 43.19.550 through 43.19.558. Not more than three employees within the unit may be exempt from chapter 41.06 RCW.

(3) No later than December 31, 1992, the director shall report to the governor and appropriate standing committees of the legislature on the implementation of programs prescribed by this section, any cost savings and efficiencies realized by their implementation, and recommendations for statutory changes. [1990 c 75 § 1; 1989 c 57 § 3.]

Effective date—1989 c 57: See note following RCW 43.19.550.

43.19.610 Motor vehicle transportation service—Motor transport account—Sources—Disbursements. There is hereby established in the state treasury an account to be known as the motor transport account into which shall be paid all moneys, funds, proceeds, and receipts as provided in RCW 43.19.615 and as may otherwise be provided by law. Disbursements therefrom shall be made in accordance with the provisions of RCW 43.19.560 through 43.19.630, 43.41.130 and 43.41.140 as authorized by the director or a duly authorized representative and as may be provided by law. [1991 1st sp.s. c 13 § 35; 1986 c 312 § 902. Prior: 1985 c 405 § 507; 1985 c 57 § 28; 1975 1st ex.s. c 167 § 12.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Severability—1986 c 312: "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." [1986 c 312 § 905.]

Severability—1985 c 405: See note following RCW 9.46.100.

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

Severability—1975 1st ex.s. c 167: See note following RCW 43.19.010.

Use of account proceeds: RCW 43.19.558.

43.19.637 Clean-fuel vehicles—Purchasing requirements. (1) At least thirty percent of all new vehicles purchased through a state contract shall be clean-fuel vehicles.

(2) The percentage of clean-fuel vehicles purchased through a state contract shall increase at the rate of five percent each year.

(3) In meeting the procurement requirement established in this section, preference shall be given to vehicles designed to operate exclusively on clean fuels. In the event that vehicles designed to operate exclusively on clean fuels are not available or would not meet the operational requirements for which a vehicle is to be procured, conventionally powered vehicles may be converted to clean fuel or dual fuel use to meet the requirements of this section.

(4) Fuel purchased through a state contract shall be a clean fuel when the fuel is purchased for the operation of a clean-fuel vehicle.

(5)(a) Weight classes are established by the following motor vehicle types:

(i) Passenger cars;

(ii) Light duty trucks, trucks with a gross vehicle weight rating by the vehicle manufacturer of less than eight thousand five hundred pounds;

(iii) Heavy duty trucks, trucks with a gross vehicle weight rating by the vehicle manufacturer of eight thousand five hundred pounds or more.

(b) This subsection does not place an obligation upon the state or its political subdivisions to purchase vehicles in any number or weight class other than to meet the percent procurement requirement.

(6) For the purposes of this section, "clean fuels" and "clean-fuel vehicles" shall be those fuels and vehicles meeting the specifications provided for in RCW 70.120.210. [1991 c 199 § 213.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Chapter 43.19A

RECYCLED PRODUCT PROCUREMENT

Sections

43.19A.005	Purpose.
43.19A.010	Definitions.
43.19A.020	Recycled content standards.
43.19A.030	Local government duties.
43.19A.040	Local government adoption of preferential purchase policy optional.
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43.19A.060	Data base of products and vendors.
43.19A.070	Education program—Product substitution list—Model procurement guidelines.
43.19A.080	Bid notification to state recycled content requirements.
43.19A.090	Vendor certification of percentage of recycled content.
43.19A.100	Procurement of compost products.
43.19A.110	Local road projects—Compost products.
43.19A.900	Captions not law—1991 c 297.

43.19A.005 Purpose. It is the purpose of this chapter to:

(1) Substantially increase the procurement of recycled content products by all local and state governmental agencies and public schools, and provide a model to encourage a comparable commitment by Washington state citizens and businesses in their purchasing practices;

(2) Target government procurement policies and goals toward those recycled products for which there are significant market development needs or that may substantially contribute to solutions to the state's waste management problem;

(3) Provide standards for recycled products for use in procurement programs by all governmental agencies;

(4) Provide the authority for all governmental agencies to adopt preferential purchasing policies for recycled products;

(5) Direct state agencies to develop strategies to increase recycled product purchases, and to provide specific goals for procurement of recycled paper products and organic recovered materials; and

(6) Provide guidance and direction for local governments and other public agencies to develop plans for increasing the procurement of recycled content products. [1991 c 297 § 1.]

43.19A.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Compost products" means mulch, soil amendments, ground cover, or other landscaping material derived from the biological or mechanical conversion of cellulose-containing waste materials.

(2) "Department" means the department of general administration.

(3) "Director" means the director of the department of general administration.

(4) "Local government" means a city, town, county, special purpose district, school district, or other municipal corporation.

(5) "Lubricating oil" means petroleum-based oils for reducing friction in engine parts and other mechanical parts.

(6) "Mixed waste paper" means assorted low-value grades of paper that have not been separated into individual grades of paper at the point of collection.

(7) "Paper and paper products" means all items manufactured from paper or paperboard.

(8) "Postconsumer waste" means a material or product that has served its intended use and has been discarded for disposal or recovery by a final consumer.

(9) "Procurement officer" means the person that has the primary responsibility for procurement of materials or products.

(10) "State agency" means all units of state government, including divisions of the governor's office, the legislature, the judiciary, state agencies and departments, correctional institutions, vocational technical institutions, and universities and colleges.

(11) "Recycled content product" or "recycled product" means a product containing recycled materials.

(12) "Recycled materials" means waste materials and by-products that have been recovered or diverted from solid waste and that can be utilized in place of a raw or virgin material in manufacturing a product and consists of materials derived from postconsumer waste, manufacturing waste, industrial scrap, agricultural wastes,

and other items, all of which can be used in the manufacture of new or recycled products.

(13) "Re-refined oils" means used lubricating oils from which the physical and chemical contaminants acquired through previous use have been removed through a refining process. Re-refining may include distillation, hydrotreating, or treatments employing acid, caustic, solvent, clay, or other chemicals, or other physical treatments other than those used in reclaiming.

(14) "USEPA product standards" means the product standards of the United States environmental protection agency for recycled content published in the code of federal regulations. [1991 c 297 § 2.]

43.19A.020 Recycled content standards. (1) The director shall adopt standards specifying the minimum content of recycled materials in products or product categories. The standards shall:

(a) Be consistent with the USEPA product standards, unless the director finds that a different standard would significantly increase recycled product availability or competition;

(b) Consider the standards of other states, to encourage consistency of manufacturing standards;

(c) Consider regional product manufacturing capability;

(d) Address specific products or classes of products; and

(e) Consider postconsumer waste content and the recyclability of the product.

(2) The director shall consult with the supply management board and department of ecology prior to adopting the recycled content standards.

(3) The director shall adopt recycled content standards for at least the following products by the dates indicated:

(a) By July 1, 1992:

- (i) Paper and paper products;
- (ii) Organic recovered materials; and
- (iii) Latex paint products;

(b) By July 1, 1993:

- (i) Products for lower value uses containing recycled plastics;
- (ii) Retread and remanufactured tires;
- (iii) Lubricating oils;
- (iv) Automotive batteries; and
- (v) Building insulation.

(4) The standards required by this section shall be applied to recycled product purchasing by the department and other state agencies. The standards may be adopted or applied by any other local government in product procurement. The standards shall provide for exceptions under appropriate circumstances to allow purchases of recycled products that do not meet the minimum content requirements of the standards. [1991 c 297 § 3.]

43.19A.030 Local government duties. (1) By January 1, 1993, each local government shall review its existing procurement policies and specifications to determine

whether recycled products are intentionally or unintentionally excluded. The policies and specifications shall be revised to include such products unless a recycled content product does not meet an established performance standard of the agency.

(2) By fiscal year 1994, each local government shall adopt a minimum purchasing goal for recycled content as a percentage of the total dollar value of supplies purchased. To assist in achieving this goal each local government shall adopt a strategy by January 1, 1993, and shall submit a description of the strategy to the department. The department shall report to the appropriate standing committees of the legislature by October 1, 1993, on the progress of implementation by local governments, and shall thereafter periodically report on the progress of recycled product purchasing by state and other public agencies. All public agencies shall respond to requests for information from the department for the purpose of its reporting requirements under this section.

(3) Each local government shall designate a procurement officer who shall serve as the primary contact with the department for compliance with the requirements of this chapter.

(4) This section shall apply only to local governments with expenditures for supplies exceeding five hundred thousand dollars for fiscal year 1989. Expenditures for capital goods and for electricity, water, or gas for resale shall not be considered a supply expenditure. [1991 c 297 § 4.]

43.19A.040 Local government adoption of preferential purchase policy optional. (1) Each local government shall consider the adoption of policies, rules, or ordinances to provide for the preferential purchase of recycled content products. Any local government may adopt the preferential purchasing policy of the department of general administration, or portions of such policy, or another policy that provides a preference for recycled content products.

(2) The department of general administration shall prepare one or more model recycled content preferential purchase policies suitable for adoption by local governments. The model policy shall be widely distributed and provided through the technical assistance and workshops under RCW 43.19A.070.

(3) A local government that is not subject to the purchasing authority of the department of general administration, and that adopts the preferential purchase policy or rules of the department, shall not be limited by the percentage price preference included in such policy or rules. [1991 c 297 § 6.]

43.19A.050 Mandatory plan for state agency procurement. The department shall prepare a mandatory state plan to increase purchases of recycled-content products by the department and all state agencies, including higher education institutions. The plan shall include purchases from public works contracts. The plan shall address the purchase of plastic products, retread and remanufactured tires, motor vehicle lubricants, latex paint,

and lead acid batteries having recycled content. In addition, the plan shall incorporate actions to achieve the following purchase level goals of recycled content paper and compost products:

(1) Paper products as a percentage of the total dollar amount purchased on an annual basis:

- (a) At least forty percent by 1993;
- (b) At least fifty percent by 1994;
- (c) At least sixty percent by 1995.

(2) Compost products as a percentage of the total dollar amount on an annual basis:

- (a) At least twenty-five percent by 1993;
- (b) At least forty percent by 1995;
- (c) At least sixty percent by 1997. [1991 c 297 § 7.]

43.19A.060 Data base of products and vendors. (1) The department shall develop a data base of available products with recycled-content products, and vendors supplying such products. The data base shall incorporate information regarding product consistency with the content standards adopted under RCW 43.19A.020. The data base shall incorporate information developed through state and local government procurement of recycled-content products.

(2) By December 1, 1992, the department shall report to the appropriate standing committees of the legislature on the cost of making the data base accessible to all state and local governments and to the private sector.

(3) The department shall compile information on purchases made by the department or pursuant to the department's purchasing authority, and information provided by local governments, regarding:

- (a) The percentage of recycled content and, if known, the amount of postconsumer waste in the products purchased;
- (b) Price;
- (c) Agency experience with the performance of recycled products and the supplier under the terms of the purchase; and
- (d) Any other information deemed appropriate by the department. [1991 c 297 § 8.]

43.19A.070 Education program—Product substitution list—Model procurement guidelines. (1) The department shall implement an education program to encourage maximum procurement of recycled products by state and local government entities. The program shall include at least the following:

(a) Technical assistance to all state and local governments and their designated procurement officers on the requirements of this chapter, including preparation of model purchase contracts, the preparation of procurement plans, and the availability of recycled products;

(b) Two or more workshops annually in which all state and local government entities are invited;

(c) Information on intergovernmental agreements to facilitate procurement of recycled products.

(2) The director shall, in consultation with the department of ecology, make available to the public, local jurisdictions, and the private sector, a comprehensive list

of substitutes for extremely hazardous, hazardous, toxic, and nonrecyclable products, and disposable products intended for a single use. The department and all state agencies exercising the purchasing authorities of the department shall include the substitute products on bid notifications, except where the department allows an exception based upon product availability, price, suitability for intended use, or similar reasons.

(3) The department shall prepare model procurement guidelines for use by local governments. [1991 c 297 § 9.]

43.19A.080 Bid notification to state recycled content requirements. A notification regarding a state or local government's intent to procure products with recycled content must be prominently displayed in the procurement solicitation or invitation to bid including:

(1) A description of the postconsumer waste content or recycled content requirements; and

(2) A description of the agency's recycled content preference program. [1991 c 297 § 11.]

43.19A.090 Vendor certification of percentage of recycled content. (1) After July 1, 1992, vendors shall certify the percentage of recycled content in products sold to state and local governments, including the percentage of postconsumer waste that is in the product. The certification shall be in the form of a label on the product or a statement by the vendor attached to the bid documents.

(2) The certification on multicomponent or multimaterial products shall verify the percentage and type of postconsumer waste and recycled content by volume contained in the major constituents of the product.

(3) The procuring agency may state in bid solicitations that permission to verify the certification by review of the bidder or manufacturer's records must be granted as a condition of the bid award, in the event of a bidder's protest or other challenge to the bid accepted.

(4) The department shall adopt rules by May 1, 1992, describing the contents of the certification required by this section. [1991 c 297 § 12.]

43.19A.100 Procurement of compost products. (1) The department shall increase the procurement of compost products for all state facilities and grounds that require landscaping or similar work. The department shall survey available vendors and state facilities for which such products are suitable, and attempt to match such supplies and need to lower transportation and other costs. The department shall consider and implement modification of performance standards where appropriate to achieve greater procurement of compost products.

(2) Beginning July 1, 1992, the total of department contracts awarded in whole or in part for the purchase of landscaping materials or soil amendments shall include compost products as follows:

(a) For the period July 1, 1992, through June 30, 1994, twenty-five percent of the total dollar amount of purchases; and

(b) On and after July 1, 1994, fifty percent of the total annual dollar amount of purchases. [1991 c 297 § 13.]

43.19A.110 Local road projects—Compost products. (1) Each county and city required to prepare a strategy under RCW 43.19A.030 shall adopt specifications for compost products to be used in road projects. The specifications developed by the department of transportation under RCW 47.28.220 may be adopted by the city or county in lieu of developing specifications.

(2) After July 1, 1992, any contract awarded in whole or in part for applying soils, soil covers, or soil amendments to road rights of way shall specify that compost materials be purchased in accordance with the following schedule:

(a) For the period July 1, 1992, through June 30, 1994, at least twenty-five percent of the total dollar amount of purchases by the city or county;

(b) On and after July 1, 1994, at least fifty percent of the annual total dollar amount of purchases by the city or county.

(3) The city or county may depart from the schedule in subsection (2) of this section where it determines that no suitable product is available at a reasonable price. [1991 c 297 § 17.]

43.19A.900 Captions not law—1991 c 297. Captions as used in this act constitute no part of the law. [1991 c 297 § 21.]

Chapter 43.20

STATE BOARD OF HEALTH

Sections

43.20.240 Public water systems—Complaint process.

43.20.240 Public water systems—Complaint process. (1) The department shall have primary responsibility among state agencies to receive complaints from persons aggrieved by the failure of a public water system. If the remedy to the complaint is not within the jurisdiction of the department, the department shall refer the complaint to the state or local agency that has the appropriate jurisdiction. The department shall take such steps as are necessary to inform other state agencies of their primary responsibility for such complaints and the implementing procedures.

(2) Each county shall designate a contact person to the department for the purpose of receiving and following up on complaint referrals that are within county jurisdiction. In the absence of any such designation, the county health officer shall be responsible for performing this function.

(3) The department and each county shall establish procedures for providing a reasonable response to complaints received from persons aggrieved by the failure of a public water system.

(4) The department and each county shall use all reasonable efforts to assist customers of public water systems in obtaining a dependable supply of water at all times. The availability of resources and the public health significance of the complaint shall be considered when determining what constitutes a reasonable effort.

(5) The department shall, in consultation with local governments, water utilities, water districts, public utility districts, and other interested parties, develop a booklet or other single document that will provide to members of the public the following information:

(a) A summary of state law regarding the obligations of public water systems in providing drinking water supplies to their customers;

(b) A summary of the activities, including planning, rate setting, and compliance, that are to be performed by both local and state agencies;

(c) The rights of customers of public water systems, including identification of agencies or offices to which they may address the most common complaints regarding the failures or inadequacies of public water systems.

This booklet or document shall be available to members of the public no later than January 1, 1991. [1990 c 132 § 3.]

Legislative findings—1990 c 132: "The legislature finds the best interests of the citizens of the state are served if:

(1) Customers served by public water systems are assured of an adequate quantity and quality of water supply at reasonable rates;

(2) There is improved coordination between state agencies engaged in water system planning and public health regulation and local governments responsible for land use planning and public health and safety; and

(3) Existing procedures and processes for water system planning are strengthened and fully implemented by state agencies, local government, and public water systems." [1990 c 132 § 1.]

Severability—1990 c 132: "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." [1990 c 132 § 7.]

Chapter 43.20A

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

Sections

43.20A.035 Inventory of charitable, educational, penal, and reformatory land.

43.20A.440 Recodified as RCW 43.20B.688.

43.20A.720 Telecommunications devices for the hearing and speech impaired—Definitions.

43.20A.725 Telecommunications devices for the hearing and speech impaired—Program for provision of devices—Generally—TDD excise tax—Report.

43.20A.730 TDD advisory committee—Generally.

43.20A.750 Grants for services in timber impact areas—Funding—Family support centers—Timber impact area defined.

43.20A.770 Consistency required in administration of statutes applicable to runaway youth, at-risk youth, and families in conflict.

43.20A.035 Inventory of charitable, educational, penal, and reformatory land. The department shall conduct an inventory of real properties as provided in RCW 79.01.006. [1991 c 204 § 2.]

43.20A.440 Recodified as RCW 43.20B.688. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.20A.720 Telecommunications devices for the hearing and speech impaired—Definitions. "Hearing impaired" means those persons who are certified to be deaf, deaf-blind, or hard of hearing, and those persons who are certified to have a hearing disability limiting their access to telecommunications.

"Speech impaired" means persons who are certified to be unable to speak or who are certified to have a speech impairment limiting their access to telecommunications.

"Telecommunications device for the deaf (TDD)" means a teletypewriter that has a typewriter keyboard and a readable display that couples with the telephone, allowing messages to be typed rather than spoken. The device allows a person to make a telephone call directly to another person possessing similar equipment. The conversation is typed through one machine to the other machine instead of spoken.

"TDD relay system" is a service for hearing and speech impaired people who have a TDD to call someone who does not have a TDD or vice versa. The service consists of several telephones being utilized by TDD relay service operators who receive either TDD or voice phone calls. If a TDD relay service operator receives a phone call from a hearing or speech impaired person wishing to call a hearing person, the operator will call the hearing person and act as an intermediary by translating what is displayed on the TDD to voice and typing what is voiced into the TDD to be read by the hearing or speech impaired caller. This process can also be reversed with a hearing person calling a deaf person through the TDD relay service.

"Qualified trainer" is a person who is knowledgeable about TDDs, signal devices, and amplifying accessories; familiar with the technical aspects of equipment designed to meet hearing impaired people's needs; and is fluent in American sign language.

"Qualified contractor" shall have bilingual staff available for quality language/cultural interpretations; quality training of operators; and policies, training, and operational procedures to be determined by the office.

"The department" means the department of social and health services of the state of Washington.

"Office" means the office of deaf services within the state department of social and health services. [1990 c 89 § 2; 1987 c 304 § 2.]

Legislative finding—1990 c 89: "The legislature finds that provision of telecommunications devices and relay capability for hearing impaired persons is an effective and needed service which should be continued. The legislature further finds that the same devices and relay capability can serve and should be extended to serve speech impaired persons." [1990 c 89 § 1.]

Legislative findings—1987 c 304: "The legislature finds that it is more difficult for hearing impaired people to have access to the telecommunications system than hearing persons. It is imperative that hearing impaired people be able to reach government offices and health, human, and emergency services with the same ease as other taxpayers. Regulations to provide telecommunications devices for the deaf with a relay system will help ensure that the hearing impaired

community has equal access to the public accommodations and telecommunications system in the state of Washington in accordance with chapter 49.60 RCW." [1987 c 304 § 1.]

Relation to other telecommunications device systems—1987 c 304: "Nothing in RCW 43.20A.725 and 43.20A.730 is inconsistent with any telecommunications device systems created by county legislative authorities under RCW 70.54.180. To the extent possible, the office, utilities and transportation commission, the TDD advisory committee, and any other persons or organizations implementing the provisions of RCW 43.20A.725 and 43.20A.730 will use the telecommunications devices already in place and work with county governments in ensuring that no duplication of services occurs." [1987 c 304 § 5.]

Short title—1987 c 304: "This act shall be known as the "Clyde Randolph Ketchum Act". [1987 c 304 § 6.]

43.20A.725 Telecommunications devices for the hearing and speech impaired—Program for provision of devices—Generally—TDD excise tax—Report.

(1) The department shall maintain a program whereby TDDs, signal devices, a TDD relay system, and amplifying accessories capable of serving the needs of the hearing and speech impaired shall be provided at no charge additional to the basic exchange rate, to an individual of school age or older, (a) who is certified as hearing impaired by a licensed physician, audiologist, or a qualified state agency, and to any subscriber that is an organization representing the hearing impaired, as determined and specified by the TDD advisory committee; or (b) who is certified as speech impaired by a licensed physician, speech pathologist, or a qualified state agency, and to any subscriber that is an organization representing the speech impaired, as determined and specified by the TDD advisory committee. For the purpose of this section, certification implies that individuals cannot use the telephone for expressive or receptive communications due to hearing or speech impairment.

(2) The office shall award contracts on a competitive basis, to qualified persons for which eligibility to contract is determined by the office, for the distribution and maintenance of such TDDs, signal devices, and amplifying accessories as shall be determined by the office. Such contract shall include a provision for the employment and use of a qualified trainer and the training of recipients in the use of such devices.

(3) The office shall establish and implement a policy for the ultimate responsibility for recovery of TDDs, signal devices, and amplifying accessories from recipients who are moving from this state or who for other reasons are no longer using them.

(4) Pursuant to recommendations of the TDD advisory committee, the office shall maintain a program whereby a relay system will be provided state-wide using operator intervention to connect hearing impaired and speech impaired persons and offices or organizations representing the hearing impaired and speech impaired, as determined and specified by the TDD advisory committee pursuant to RCW 43.20A.730. The relay system shall be the most cost-effective possible and shall operate in a manner consistent with federal requirements for such systems.

(5) The program shall be funded by telecommunications devices for the deaf (TDD) excise tax applied to each switched access line provided by the local exchange companies. The office shall determine, in consultation

with the TDD advisory committee, the amount of money needed to fund the program on an annual basis, including both operational costs and a reasonable amount for capital improvements such as equipment upgrade and replacement. That information shall be given by the department in an annual budget to the utilities and transportation commission no later than March 1 prior to the beginning of the fiscal year. The utilities and transportation commission shall then determine the amount of TDD excise tax to be placed on each access line and shall inform each local exchange company of this amount no later than May 15. The TDD excise tax shall not exceed ten cents per month per access line. Each local exchange company shall impose the amount of excise tax determined by the commission as of July 1, and shall remit the amount collected directly to the department on a monthly basis. The TDD excise tax shall be separately identified on each ratepayer's bill as "Telecommunications devices funds for deaf and hearing impaired". All proceeds from the TDD excise tax shall be put into a fund to be administered by the office through the department.

(6) The office shall administer and control the award of money to all parties incurring costs in implementing and maintaining telecommunications services, programs, equipment, and technical support services in accordance with the provisions of RCW 43.20A.725.

(7) The department shall provide the legislature with a biennial report on the operation of the program. The first report shall be provided no later than December 1, 1990, and successive reports every two years thereafter. Reports shall be prepared in consultation with the TDD advisory committee and the utilities and transportation commission. The reports shall, at a minimum, briefly outline the accomplishments of the program, the number of persons served, revenues and expenditures, the prioritizing of services to those eligible based on such factors as degree of physical handicap or the allocation of the program's revenue between provision of devices to individuals and operation of the state-wide relay service, other major policy or operational issues, and proposals for improvements or changes for the program. The first report shall contain a study which includes examination of like programs in other states, alternative methods of financing the program, alternative methods of using the telecommunications system, advantages and disadvantages of operating the TDD program from within the department, by telecommunications companies, and by a private, nonprofit corporation, and means to limit demand for system usage.

(8) The program shall be consistent with the requirements of federal law for the operation of both interstate and intrastate telecommunications services for the deaf or hearing impaired or speech impaired. The department and the utilities and transportation commission shall be responsible for ensuring compliance with federal requirements and shall provide timely notice to the legislature of any legislation that may be required to accomplish compliance. [1990 c 89 § 3; 1987 c 304 § 3.]

Legislative finding—1990 c 89: See note following RCW 43.20A.720.

43.20A.730 TDD advisory committee—Generally.

(1) The department advisory committee on deafness shall establish a TDD advisory committee to oversee operation of the TDD program. The TDD advisory committee shall consist of no more than thirteen individuals representing the hearing impaired and speech impaired communities, the department, the utilities and transportation commission, agencies and services serving the hearing impaired and speech impaired, and local exchange companies in the state. The membership on the TDD advisory committee shall, to the maximum extent possible, include representatives from (a) the major state-wide organizations representing the hearing impaired and speech impaired, (b) organizations for the hearing impaired and speech impaired located in areas of the state with high populations of such persons, and (c) organizations that reflect the different geographic regions of the state. In order to develop, implement, and maintain a state-wide relay system providing cost-effective relay centers at a reasonable cost and that will meet the requirements of the hearing impaired and speech impaired, the TDD advisory committee shall investigate options, conduct public hearings as needed to determine the most cost-effective method of operating a state-wide relay system providing relay centers to the hearing impaired and speech impaired, and solicit the advice, counsel, and assistance of interested parties and nonprofit consumer organizations for hearing impaired and speech impaired persons state-wide. The TDD advisory committee shall also, in conjunction with the department, monitor the activities and moneys that are being spent by the department for the program herein.

(2) The TDD advisory committee shall establish criteria and specify state-wide organizations representing the hearing or speech impaired meeting such criteria that are to receive telecommunications devices pursuant to RCW 43.20A.725(1), and in which offices the equipment shall be installed if an organization has more than one office. [1990 c 89 § 4; 1987 c 304 § 4.]

Legislative finding—1990 c 89: See note following RCW 43.20A.720.

43.20A.750 Grants for services in timber impact areas—Funding—Family support centers—Timber impact area defined.

(1) The department of social and health services shall help families and workers in timber impact areas make the transition through economic difficulties and shall provide services to assist workers to gain marketable skills. The department, as a member of the agency timber task force and in consultation with the economic recovery coordination board, and, where appropriate, under an interagency agreement with the department of community development, shall provide grants through the office of the secretary for services to the unemployed in timber impact areas, including providing direct or referral services, establishing and operating service delivery programs, and coordinating delivery programs and delivery of services. These grants may be awarded for family support centers, reemployment centers, or other local service agencies.

(2) The services provided through the grants may include, but need not be limited to: Credit counseling; social services including marital counseling; psychotherapy or psychological counseling; mortgage foreclosures and utilities problems counseling; drug and alcohol abuse services; medical services; and residential heating and food acquisition.

(3) Funding for these services shall be coordinated through the economic recovery coordination board which will establish a fund to provide child care assistance, mortgage assistance, and counseling which cannot be met through current programs. No funds shall be used for additional full-time equivalents for administering this section.

(4)(a) Grants for family support centers are intended to provide support to families by responding to needs identified by the families and communities served by the centers. Services provided by family support centers may include parenting education, child development assessments, health and nutrition education, counseling, and information and referral services. Such services may be provided directly by the center or through referral to other agencies participating in the interagency team.

(b) The department shall consult with the council on child abuse or neglect regarding grants for family support centers.

(5) "Timber impact area" means a county having a population of less than five hundred thousand, or a city or town located within a county having a population of less than five hundred thousand, and meeting two of the following three criteria, as determined by the employment security department, for the most recent year such data is available: (a) A lumber and wood products employment location quotient at or above the state average; (b) projected or actual direct lumber and wood products job losses of one hundred positions or more, except counties having a population greater than two hundred thousand but less than five hundred thousand must have direct lumber and wood products job losses of one thousand positions or more; or (c) an annual unemployment rate twenty percent or more above the state average. [1991 c 315 § 28.]

Intent—1991 c 315: See note following RCW 50.12.270.

Severability—**Conflict with federal requirements**—**Effective date**—1991 c 315: See RCW 50.70.900 through 50.70.902.

43.20A.770 Consistency required in administration of statutes applicable to runaway youth, at-risk youth, and families in conflict. The department shall ensure that the administration of chapter 13.32A RCW and applicable portions of chapter 74.13 RCW relating to runaway youth, at-risk youth, and families in conflict is consistent in all areas of the state and in accordance with statutory requirements. [1991 c 364 § 6.]

Conflict with federal requirements—1991 c 364: See note following RCW 70.96A.020.

Chapter 43.20B

REVENUE RECOVERY FOR DEPARTMENT OF SOCIAL AND HEALTH SERVICES

Sections

43.20B.020	Fees for services—Department of health and department of social and health services.
43.20B.040	Chapter does not apply where another party liable—Statement of lien—Form.
43.20B.050	Liens—Compromise—Settlement or judgment.
43.20B.060	Reimbursement for medical care or residential care—Lien—Subrogation.
43.20B.070	Torts committed against recipients of state assistance—Duties of attorney representing recipient.
43.20B.110	License fees to be charged by secretary—Waiver—Review and comment.
43.20B.130	Decodified.
43.20B.140	Recovery of costs of medical care provided to recipients sixty-five or older authorized—Exceptions—Lien.
43.20B.635	Overpayments of assistance—Orders to withhold property of debtor—Procedures.
43.20B.687	Decodified.
43.20B.688	Limitation on actions to enforce vendor overpayment debts.

43.20B.020 Fees for services—Department of health and department of social and health services. The department of social and health services and the department of health are authorized to charge fees for services provided unless otherwise prohibited by law. The fees may be sufficient to cover the full cost of the service provided if practical or may be charged on an ability-to-pay basis if practical. This section does not supersede other statutory authority enabling the assessment of fees by the departments. Whenever the department of social and health services is authorized by law to collect total or partial reimbursement for the cost of its providing care of or exercising custody over any person, the department shall collect the reimbursement to the extent practical. [1991 c 3 § 295; 1981 1st ex.s. c 6 § 25. Formerly RCW 43.20A.670.]

Effective date—**Severability**—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

43.20B.040 Chapter does not apply where another party liable—Statement of lien—Form. The form of the lien in RCW 43.20B.060 shall be substantially as follows:

STATEMENT OF LIEN

Notice is hereby given that the State of Washington, Department of Social and Health Services, has rendered assistance or provided residential care 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 43.20B.060, for the amount of such assistance or residential care, upon any sum due and owing _____ (name of injured person) from _____, alleged to have caused the injury, and/or his or her 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 SOCIAL AND HEALTH SERVICES

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.

Signed and sworn to or affirmed before me this _____ day of _____, 19__

by _____ (name of person making statement).

(Seal or stamp)

Notary Public in and for the State of Washington
My appointment expires: _____

[1990 c 100 § 3; 1979 c 141 § 341; 1969 ex.s. c 173 § 9. Formerly RCW 74.09.182.]

43.20B.050 Liens—Compromise—Settlement or judgment. (1) No settlement made by and between the recipient and tortfeasor and/or insurer shall discharge or otherwise compromise the lien created in RCW 43.20B.060 without the express written consent of the secretary. Discretion to compromise such liens rests solely with the secretary or the secretary's designee.

(2) No settlement or judgment shall be entered purporting to compromise the lien created by RCW 43.20B.060 without the express written consent of the secretary or the secretary's designee. [1990 c 100 § 4; 1969 ex.s. c 173 § 12. Formerly RCW 74.09.186.]

Application—1990 c 100 §§ 2, 4, 7(1), 8(2): See note following RCW 43.20B.060.

43.20B.060 Reimbursement for medical care or residential care—Lien—Subrogation. (1) To secure reimbursement of any assistance paid under chapter 74.09 RCW or reimbursement for any residential care provided by the department at a hospital for the mentally ill or habilitative care center for the developmentally disabled, as a result of injuries to or illness of a recipient caused by the negligence or wrong of another, the department shall be subrogated to the recipient's rights against a tortfeasor or the tortfeasor's insurer, or both.

(2) The department shall have a lien upon any recovery by or on behalf of the recipient from such tortfeasor or the tortfeasor's insurer, or both to the extent of the value of the assistance paid or residential care provided by the department, provided that such lien shall not be

effective against recoveries subject to wrongful death when there are surviving dependents of the deceased. The lien shall become effective upon filing with the county auditor in the county where the assistance was authorized or where any action is brought against the tortfeasor or insurer. The lien may also be filed in any other county or served upon the recipient in the same manner as a civil summons if, in the department's discretion, such alternate filing or service is necessary to secure the department's interest. The additional lien shall be effective upon filing or service.

(3) The lien of the department shall be upon any claim, right of action, settlement proceeds, money, or benefits arising from an insurance program to which the recipient might be entitled (a) against the tortfeasor or insurer of the tortfeasor, or both, and (b) under any contract of insurance purchased by the recipient or by any other person providing coverage for the illness or injuries for which the assistance or residential care is paid or provided by the department.

(4) If recovery is made by the department under this section and the subrogation is fully or partially satisfied through an action brought by or on behalf of the recipient, the amount paid to the department shall bear its proportionate share of attorneys' fees and costs. The determination of the proportionate share to be borne by the department shall be based upon:

(a) The fees and costs approved by the court in which the action was initiated; or

(b) The written agreement between the attorney and client which establishes fees and costs when fees and costs are not addressed by the court.

(c) When fees and costs have been approved by a court, after notice to the department, the department shall have the right to be heard on the matter of attorneys' fees and costs or its proportionate share.

(d) When fees and costs have not been addressed by the court, the department shall receive at the time of settlement a copy of the written agreement between the attorney and client which establishes fees and costs and may request and examine documentation of fees and costs associated with the case. The department may bring an action in superior court to void a settlement if it believes the attorneys' calculation of its proportionate share of fees and costs is inconsistent with the written agreement between the attorney and client which establishes fees and costs or if the fees and costs associated with the case are exorbitant in relation to cases of a similar nature. [1990 c 100 § 7.]

Application—1990 c 100 §§ 2, 4, 7(1), 8(2): "Sections 2, 4, 7(1), and 8(2) of this act apply to all existing claims against third parties for which settlements have not been reached or judgments entered by June 7, 1990." [1990 c 100 § 13.]

43.20B.070 Torts committed against recipients of state assistance—Duties of attorney representing recipient. An attorney representing a person who, as a result of injuries or illness sustained through the negligence or wrong of another, has received, is receiving, or has applied to receive assistance under chapter

74.09 RCW, or residential care provided by the department at a hospital for the mentally ill or habilitative care center for the developmentally disabled, shall:

(1) Notify the department at the time of filing any claim against a third party, commencing an action at law, negotiating a settlement, or accepting a settlement offer from the tortfeasor or the tortfeasor's insurer, or both; and

(2) Give the department thirty days' notice before any judgment, award, or settlement may be satisfied in any action or any claim by the applicant or recipient to recover damages for such injuries or illness. [1990 c 100 § 8.]

Application—1990 c 100 §§ 2, 4, 7(1), 8(2): See note following RCW 43.20B.060.

43.20B.110 License fees to be charged by secretary—Waiver—Review and comment. (1) The secretary shall charge fees to the licensee for obtaining a license. The secretary may waive the fees when, in the discretion of the secretary, the fees would not be in the best interest of public health and safety, or when the fees would be to the financial disadvantage of the state.

(2) Fees charged shall be based on, but shall not exceed, the cost to the department for the licensure of the activity or class of activities and may include costs of necessary inspection.

(3) Department of social and health services advisory committees may review fees established by the secretary for licenses and comment upon the appropriateness of the level of such fees.

(4) Fees associated with the licensing or regulation of health professions or health facilities administered by the department of health, shall be in accordance with RCW 43.70.110 and 43.70.250. [1991 c 3 § 296; 1989 1st ex.s. c 9 § 216; 1987 c 75 § 6; 1982 c 201 § 2. Formerly RCW 43.20A.055.]

Effective date—**Severability**—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

43.20B.130 Decodified. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.20B.140 Recovery of costs of medical care provided to recipients sixty-five or older authorized—Exceptions—Lien. (1) The department is authorized to recover the cost of medical care provided to a recipient who was sixty-five years or older, upon the recipient's death except:

(a) Where there is a surviving spouse; or

(b) Where there is a surviving child under 21 years of age or blind or disabled as defined in the state plan under Title XIX of the social security act; or

(c) To the extent of the first fifty thousand dollars of the estate value at the time of death, where there are surviving children other than as defined above, and not to exceed thirty-five percent of the remainder.

(2) The department may assert and enforce a claim against the estate of the deceased recipient for the debt

in subsection (1) of this section, in accordance with chapter 11.40 RCW.

(3) The remedies in subsection (2) of this section are nonexclusive and upon the death of the recipient, the department shall have a lien for the debt in subsection (1) of this section. The lien attaches to the real property of which the deceased recipient was seized immediately before death. Upon subsequent filing of the notice thereof with the county auditor of the county in which the real property is located, the lien shall be deemed to relate back and be effective against such property as of the date of the recipient's death. Recovery under the lien shall be upon the sale or transfer of the subject property. [1987 c 283 § 13. Formerly RCW 74.09.750.]

Severability—**Savings**—1987 c 283: See notes following RCW 43.20A.020.

43.20B.635 Overpayments of assistance—Orders to withhold property of debtor—Procedures. After service of a notice of debt for an overpayment as provided for in RCW 43.20B.630, stating the debt accrued, the secretary may 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 the debtor. The order to withhold and deliver shall state the amount of the debt, and shall state in summary the terms of this section, RCW 6.27.150 and 6.27.160, chapters 6.13 and 6.15 RCW, 15 U.S.C. 1673, and other state or federal exemption laws applicable generally to debtors. 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 shall answer the 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. The secretary may require further and additional answers to be completed by the person, firm, corporation, association, political subdivision, or department of the state. If any such person, firm, corporation, association, political subdivision, or department of the state possesses 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 the 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, 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, subject to the exemptions under RCW 6.27.150 and 6.27.160, chapters 6.13 and 6.15 RCW, 15 U.S.C. 1673, and other state or federal law applicable generally to debtors, of the money or other property held or claimed satisfies the requirement of the order to withhold and deliver. Delivery to the secretary serves 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 secretary shall also, on or before the date of service of the order to withhold and deliver, mail or cause to be mailed by certified mail a copy of the order to withhold and deliver to the debtor at the debtor's last known post office address, or, in the alternative, a copy of the order to withhold and deliver shall be served on the debtor in the same manner as a summons in a civil action on or before the date of service of the order or within two days thereafter. The copy of the order shall be mailed or served together with a concise explanation of the right to petition for a hearing on any issue related to the collection. This requirement is not jurisdictional, but, if the copy is not mailed or served as provided in this section, or if any irregularity appears with respect to the mailing or service, the superior court, on its discretion on motion of the debtor promptly made and supported by affidavit showing that the debtor has suffered substantial injury due to the failure to mail the copy, may set aside the order to withhold and deliver and award to the debtor an amount equal to the damages resulting from the secretary's failure to serve on or mail to the debtor the copy. [1990 c 100 § 1; 1987 c 75 § 37; 1981 c 163 § 2. Formerly RCW 74.04.710.]

43.20B.687 Decodified. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.20B.688 Limitation on actions to enforce vendor overpayment debts. Any action to enforce a vendor overpayment debt shall be commenced within six years from the date of the department's notice to the vendor. [1987 c 283 § 15. Formerly RCW 43.20A.440.]

Severability—Savings—1987 c 283: See notes following RCW 43.20A.020.

Vendor overpayments: RCW 43.20B.680 through 43.20B.695.

Chapter 43.21A DEPARTMENT OF ECOLOGY

Sections

43.21A.650 Freshwater aquatic weeds account.

[1990-91 RCW Supp—page 1004]

43.21A.660 Freshwater aquatic weeds management program.

43.21A.650 Freshwater aquatic weeds account. The freshwater aquatic weeds account is hereby created in the state treasury. Expenditures from this account may only be used as provided in RCW 43.21A.660. Moneys in the account may be spent only after appropriation. [1991 c 302 § 2.]

Findings—1991 c 302: "The legislature hereby finds that Eurasian water milfoil and other freshwater aquatic weeds can adversely affect fish populations, reduce habitat for desirable plant and wildlife species, and decrease public recreational opportunities. The legislature further finds that the spread of freshwater aquatic weeds is a state-wide problem and requires a coordinated response among state agencies, local governments, and the public. It is therefore the intent of the legislature to establish a funding source to reduce the propagation of Eurasian water milfoil and other freshwater aquatic weeds and to manage the problems created by such freshwater aquatic plants." [1991 c 302 § 1.]

Effective date—1991 c 302: See note following RCW 46.16.670.

43.21A.660 Freshwater aquatic weeds management program. Funds in the freshwater aquatic weeds account may be appropriated to the department of ecology to develop a freshwater aquatic weeds management program to:

(1) Issue grants to cities, counties, and state agencies to prevent, remove, reduce, or manage excessive freshwater aquatic weeds. Such grants shall only be issued for lakes, rivers, or streams with a public boat launching ramp. The department shall give preference to projects having matching funds or in-kind services;

(2) Develop public education programs relating to preventing the propagation and spread of freshwater aquatic weeds;

(3) Provide technical assistance to local governments and citizen groups; and

(4) Fund demonstration or pilot projects consistent with the purposes of this section. [1991 c 302 § 4.]

Findings—1991 c 302: See note following RCW 43.21A.650.

Effective date—1991 c 302: See note following RCW 46.16.670.

Chapter 43.21B

ENVIRONMENTAL HEARINGS OFFICE— POLLUTION CONTROL HEARINGS BOARD OF THE STATE

Sections

43.21B.005 Environmental hearings office created—Composition—Chief executive officer—Staff support.

43.21B.090 Principal office—Quorum—Hearings—Board powers and duties.

43.21B.130 Administrative procedure act to apply to appeal of board rules and regulations—Scope of board action on decisions and orders of others.

43.21B.150 Informal hearings—Generally.

43.21B.160 Formal hearings—Generally.

43.21B.230 Appeals of department actions—Formal or informal hearings.

43.21B.005 Environmental hearings office created—Composition—Chief executive officer—

Staff support. There is created an environmental hearings office of the state of Washington. The environmental hearings office shall consist of the pollution control hearings board created in RCW 43.21B.010, the forest practices appeals board created in RCW 76.09.210, the shorelines hearings board created in RCW 90.58.170, and the hydraulic appeals board created in RCW 75.20.130. The chairman of the pollution control hearings board shall be the chief executive officer of the environmental hearings office. Membership, powers, functions, and duties of the pollution control hearings board, the forest practices appeals board, the shorelines hearings board, and the hydraulic appeals board shall be as provided by law.

The chief executive officer of the environmental hearings office may appoint an administrative appeals judge who shall possess the powers and duties conferred by the administrative procedure act, chapter 34.05 RCW, in cases before the boards comprising the office. The administrative appeals judge shall have a demonstrated knowledge of environmental law, and shall be admitted to the practice of law in the state of Washington. Additional administrative appeals judges may also be appointed by the chief executive officer on the same terms. Administrative appeals judges shall not be subject to chapter 41.06 RCW.

The chief executive officer may appoint, discharge, and fix the compensation of such administrative or clerical staff as may be necessary.

The chief executive officer may also contract for required services. [1990 c 65 § 1; 1986 c 173 § 3; 1979 ex.s. c 47 § 2.]

Intent—1979 ex.s. c 47: "It is the intent of the legislature to consolidate administratively the pollution control hearings board, the forest practices appeals board, and the shorelines hearings board into one agency of state government with minimum disturbance to these boards. It is not the intent of the legislature in consolidating these boards to change the existing membership of these boards.

All full-time employees of the pollution control hearings board and the full-time employee of the forest practices appeals board shall be full-time employees of the environmental hearings office without loss of rights. Property and obligations of these boards and the shorelines hearings board shall be property and obligations of the environmental hearings office." [1979 ex.s. c 47 § 1.]

43.21B.090 Principal office—Quorum—Hearings—Board powers and duties. The principal office of the hearings board shall be at the state capitol, but it may sit or hold hearings at any other place in the state. A majority of the hearings 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 of the hearings board be vacant. One or more members may hold hearings and take testimony to be reported for action by the hearings board when authorized by rule or order of the hearings board. The hearings board shall perform all the powers and duties specified in this chapter or as otherwise provided by law. [1990 c 65 § 2; 1974 ex.s. c 69 § 1; 1970 ex.s. c 62 § 39.]

43.21B.130 Administrative procedure act to apply to appeal of board rules and regulations—Scope of board action on decisions and orders of others. The administrative procedure act, chapter 34.05 RCW, shall apply to the appeal of rules and regulations adopted by the board to the same extent as it applied to the review of rules and regulations adopted by the directors and/or boards or commissions of the various departments whose powers, duties and functions were transferred by section 6, chapter 62, Laws of 1970 ex. sess. to the department. All other decisions and orders of the director and all decisions of air pollution control boards or authorities established pursuant to chapter 70.94 RCW shall be subject to review by the hearings board as provided in this chapter. [1990 c 65 § 3; 1970 ex.s. c 62 § 43.]

43.21B.150 Informal hearings—Generally. In all appeals involving an informal hearing, the hearings board shall have all powers relating to the administration of oaths, issuance of subpoenas, and taking of depositions as are granted to agencies by chapter 34.05 RCW. In the case of appeals within the jurisdiction of the hearings board, the hearings board or any member thereof may obtain such assistance, including the making of field investigations, from the staff of the director as the hearings board or any member thereof may deem necessary or appropriate: PROVIDED, That any communication, oral or written, from the staff of the director to the hearings board shall be presented only in an open hearing. [1990 c 65 § 4; 1974 ex.s. c 69 § 2; 1970 ex.s. c 62 § 45.]

43.21B.160 Formal hearings—Generally. In all appeals involving a formal hearing, the hearings board shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions as are granted to agencies in chapter 34.05 RCW, the Administrative Procedure Act. The hearings 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 34.05 RCW relating to adjudicative proceedings. In the case of appeals within the jurisdiction of the hearings board, the hearings board, or any member thereof, may obtain such assistance, including the making of field investigations, from the staff of the director as the hearings board, or any member thereof, may deem necessary or appropriate. Any communication, oral or written, from the staff of the director to the hearings board shall be presented only in an open hearing. [1990 c 65 § 5; 1989 c 175 § 103; 1974 ex.s. c 69 § 3; 1970 ex.s. c 62 § 46.]

Effective date—1989 c 175: See note following RCW 34.05.010.

43.21B.230 Appeals of department actions—Formal or informal hearings. Any person having received notice of a denial of a petition, a notice of determination, notice of or an order made by the department may appeal, within thirty days from the date of the notice of such denial, order, or determination to the hearings board. The appeal shall be perfected by serving a copy

of the notice of appeal upon the department or air pollution authority established pursuant to chapter 70.94 RCW, as the case may be, within the time specified herein and by filing the original thereof with proof of service with the clerk of the hearings board. If the person intends that the hearing before the hearings board be a formal one, the notice of appeal shall so state. In the event that the notice of appeal does not so state, the hearing shall be an informal one: PROVIDED, HOWEVER, That nothing shall prevent the department or the air pollution authority, as the case may be, within ten days from the date of its receipt of the notice of appeal, from filing with the clerk of the hearings board notice of its intention that the hearing be a formal one. [1990 c 65 § 6; 1970 ex.s. c 62 § 53.]

Chapter 43.21F STATE ENERGY OFFICE

Sections

- 43.21F.035 State energy office—Creation—Director—Administrative support for energy facility site evaluation council.
 43.21F.045 Duties of energy office.
 43.21F.047 Development of state energy strategy—Report to legislature.

43.21F.035 State energy office—Creation—Director—Administrative support for energy facility site evaluation council. The Washington state energy office is hereby created as an agency of state government, responsible to the governor and the legislature for carrying out the purposes of this chapter. The director shall be appointed by the governor with the consent of the senate and shall serve at the pleasure of the governor. The salary of the director shall be determined pursuant to RCW 43.03.040. The director shall employ such personnel as are necessary to implement this chapter and chapter 80.50 RCW. The employment of personnel shall be in accordance with chapter 41.06 RCW. [1990 c 12 § 1; 1981 c 295 § 3.]

Effective date—1990 c 12: See note following RCW 80.50.030.

43.21F.045 Duties of energy office. The energy office shall have the following duties:

(1) The office shall prepare and update contingency plans for implementation in the event of energy shortages or emergencies. The plans shall conform to chapter 43.21G RCW and shall include procedures for determining when these shortages or emergencies exist, the state officers and agencies to participate in the determination, and actions to be taken by various agencies and officers of state government in order to reduce hardship and maintain the general welfare during these emergencies. The office shall coordinate the activities undertaken pursuant to this subsection with other persons. The components of plans that require legislation for their implementation shall be presented to the legislature in the form of proposed legislation at the earliest practicable date. The office shall report to the governor and the legislature on probable, imminent, and existing energy

shortages, and shall administer energy allocation and curtailment programs in accordance with chapter 43.21G RCW.

(2) The office shall establish and maintain a central repository in state government for collection of existing data on energy resources, including:

(a) Supply, demand, costs, utilization technology, projections, and forecasts;

(b) Comparative costs of alternative energy sources, uses, and applications; and

(c) Inventory data on energy research projects in the state conducted under public and/or private auspices, and the results thereof.

(3) The office shall coordinate federal energy programs appropriate for state-level implementation, carry out such energy programs as are assigned to it by the governor or the legislature, and monitor federally funded local energy programs as required by federal or state regulations.

(4) The office shall develop energy policy recommendations for consideration by the governor and the legislature.

(5) The office shall provide assistance, space, and other support as may be necessary for the activities of the state's two representatives to the Pacific northwest electric power and conservation planning council. To the extent consistent with federal law, the office shall request that Washington's council members request the administrator of the Bonneville power administration to reimburse the state for the expenses associated with the support as provided in the Pacific Northwest Electric Power Planning and Conservation Act (P.L. 96-501).

(6) The office shall cooperate with state agencies, other governmental units, and private interests on energy matters.

(7) The office shall represent the interests of the state in the siting, construction, and operation of nuclear waste storage and disposal facilities.

(8) The office shall serve as the official state agency responsible for coordination of energy-related activities.

(9) No later than December 1, 1982, and by December 1st of each even-numbered year thereafter, the office shall prepare and transmit to the governor and the legislature a report on energy supply and demand, conservation, and other factors as appropriate.

(10) The office shall provide support for increasing cost-effective energy conservation, including assisting in the removal of impediments to timely implementation.

(11) The office shall provide support for the development of cost-effective energy resources including assisting in the removal of impediments to timely construction.

(12) The office shall adopt rules, under chapter 34.05 RCW, necessary to carry out the powers and duties enumerated in this chapter.

(13) The office shall provide administrative assistance, space, and other support as may be necessary for the activities of the energy facility site evaluation council, as provided for in RCW 80.50.030. [1990 c 12 § 2; 1987 c 505 § 29; 1981 c 295 § 4.]

Effective date—1990 c 12: See note following RCW 80.50.030.

43.21F.047 Development of state energy strategy—Report to legislature. (1) The state energy office shall develop a state energy strategy under the guidance of an advisory committee. The advisory committee shall include twenty members and represent different regions of the state, including fifteen citizens appointed by the governor from the following groups: One person recommended by the investor-owned electric utilities, one person recommended by the investor-owned natural gas utilities, one person employed by or recommended by a natural gas pipeline serving the state, one person recommended by the suppliers of petroleum products, one person recommended by municipally owned electric utilities, one person recommended by the public utility districts, one person recommended by industrial energy users, one person recommended by commercial energy users, one person recommended by agricultural energy users, one person recommended by the association of Washington cities, one person recommended by the Washington association of counties, two persons recommended by civic organizations, and two persons recommended by environmental organizations. In addition, the advisory committee shall include one of the representatives of the state of Washington to the Pacific Northwest electric power and conservation planning council selected by the governor; the chair of the energy facility site evaluation council; one member of the utilities and transportation commission selected by the chair of the commission; one member of the house of representatives selected by the speaker of the house of representatives; and one member of the senate selected by the majority leader of the senate. The chair of the advisory committee will be appointed by the governor from citizen members. The director may establish technical advisory groups as necessary to assist in the development of the strategy. The director shall provide for extensive public involvement throughout the development of the strategy.

(2) The state energy strategy shall consider all forms of energy and each major sector of energy consumption and shall:

(a) Assess future needs of the state and future resources available for use in the state for each form of energy;

(b) Identify measures to assist in maintaining adequate, reliable, secure, economic, and environmentally acceptable supplies;

(c) Identify and, to the extent possible, quantify the costs and benefits of energy alternatives including direct economic costs and benefits, environmental costs and benefits, and the costs of inadequate or unreliable energy supplies;

(d) Develop a framework in which public decisions and actions affecting energy supply and use can be evaluated including the impact of decisions in other areas of public policy on energy supply and cost and on the use of energy and the establishment of goals to guide energy-related decisions;

(e) Evaluate the future role of the state energy office and means of financing those activities determined essential to that role; and

(f) Recommend energy goals and policies to the governor and the legislature.

(3) In developing the state energy strategy, the state energy office shall:

(a) Ensure that the information developed is objective and impartial and facilitates the effective and efficient operation of such energy markets as may exist and recognizes and conforms to the pattern of regulation governing public service companies but shall not mandate the use of one energy source over another;

(b) Draw upon existing public and private sector information and expertise in energy matters to the fullest extent possible through consultation and cooperation;

(c) Recognize the planning horizons required for each segment of the energy industry and the need for state actions and decisions to take those planning horizons into consideration; and

(d) Ensure that the strategy is coordinated with the energy planning activities of federal, state, and private entities and does not duplicate what is already available.

(4) The energy office shall provide a progress report to the house of representatives and senate committees on energy and utilities in January 1992. A final report shall be provided to the governor and the legislature by December 1, 1992. [1991 c 201 § 1.]

Captions not law—Severability—1991 c 201: See RCW 39.35C.900 and 39.35C.901.

Chapter 43.21I

OFFICE OF MARINE SAFETY

Sections

43.211.005	Findings.
43.211.010	Office of marine safety.
43.211.020	Administrator of marine safety.
43.211.030	Administrator's powers.
43.211.040	Authority to administer oaths and issue subpoenas.
43.211.900	Effective dates—Severability—1991 c 200.

Abolishment of office: RCW 88.46.921.

43.21I.005 Findings. The legislature declares that Washington's waters have irreplaceable value for the citizens of the state. These waters are vital habitat for numerous and diverse marine life and wildlife and the source of recreation, aesthetic pleasure, and pride for Washington's citizens. These waters are also vital for much of Washington's economic vitality.

The legislature finds that the transportation of oil on these waters creates a great potential hazard to these important natural resources. The legislature also finds that there is no state agency responsible for maritime safety to ensure this state's interest in preserving these resources.

The legislature therefore finds that in order to protect these waters it is necessary to establish an office of marine safety which will have the responsibility to promote the safety of marine transportation in Washington. [1991 c 200 § 401.]

43.21I.010 Office of marine safety. (1) There is hereby created an agency of state government to be

known as the office of marine safety. The office shall be vested with all powers and duties transferred to it and such other powers and duties as may be authorized by law. The main administrative office of the office shall be located in the city of Olympia. The administrator may establish administrative facilities in other locations, if deemed necessary for the efficient operation of the office, and if consistent with the principles set forth in subsection (2) of this section.

(2) The office of marine safety shall be organized consistent with the goals of providing state government with a focus in marine transportation and serving the people of this state. The legislature recognizes that the administrator needs sufficient organizational flexibility to carry out the office's various duties. To the extent practical, the administrator shall consider the following organizational principles:

(a) Clear lines of authority which avoid functional duplication within and between subelements of the office;

(b) A clear and simplified organizational design promoting accessibility, responsiveness, and accountability to the legislature, the consumer, and the general public; and

(c) Maximum span of control without jeopardizing adequate supervision.

(3) The office shall provide leadership and coordination in identifying and resolving threats to the safety of marine transportation and the impact of marine transportation on the environment:

(a) Working with other state agencies and local governments to strengthen the state and local governmental partnership in providing public protection;

(b) Providing expert advice to the executive and legislative branches of state government;

(c) Providing active and fair enforcement of rules;

(d) Working with other federal, state, and local agencies and facilitating their involvement in planning and implementing marine safety measures;

(e) Providing information to the public; and

(f) Carrying out such other related actions as may be appropriate to this purpose.

(4) In accordance with the administrative procedure act, chapter 34.05 RCW, the office shall ensure an opportunity for consultation, review, and comment before the adoption of standards, guidelines, and rules.

(5) Consistent with the principles set forth in subsection (2) of this section, the administrator may create such administrative divisions, offices, bureaus, and programs within the office as the administrator deems necessary. The administrator shall have complete charge of and supervisory powers over the office, except where the administrator's authority is specifically limited by law.

(6) The administrator shall appoint such personnel as are necessary to carry out the duties of the office in accordance with chapter 41.06 RCW. [1991 c 200 § 402.]

43.21I.020 Administrator of marine safety. The executive head and appointing authority of the office shall

be the administrator of marine safety. The administrator shall be appointed by, and serve at the pleasure of, the governor in accordance with RCW 43.17.020. The administrator shall be paid a salary to be fixed by the governor in accordance with RCW 43.03.040. [1991 c 200 § 403.]

43.21I.030 Administrator's powers. In addition to any other powers granted the administrator, the administrator may:

(1) Adopt, in accordance with chapter 34.05 RCW, rules necessary to carry out the provisions of this chapter and chapter 88.46 RCW;

(2) Appoint such advisory committees as may be necessary to carry out the provisions of this chapter and chapter 88.46 RCW. Members of such advisory committees are authorized to receive travel expenses in accordance with RCW 43.03.050 and 43.03.060. The administrator shall review each advisory committee within the jurisdiction of the office and each statutory advisory committee on a biennial basis to determine if such advisory committee is needed. The criteria specified in RCW 43.131.070 shall be used to determine whether or not each advisory committee shall be continued;

(3) Undertake studies, research, and analysis necessary to carry out the provisions of this chapter and chapter 88.46 RCW;

(4) Delegate powers, duties, and functions of the department to employees of the department as the secretary deems necessary to carry out the provisions of this chapter and chapter 88.46 RCW;

(5) Enter into contracts on behalf of the department to carry out the purposes of this chapter and chapter 88.46 RCW;

(6) Act for the state in the initiation of, or the participation in, any intergovernmental program for the purposes of this chapter and chapter 88.46 RCW; or

(7) Accept gifts, grants, or other funds. [1991 c 200 § 405.]

43.21I.040 Authority to administer oaths and issue subpoenas. (1) The administrator shall have full authority to administer oaths and take testimony thereunder, to issue subpoenas requiring the attendance of witnesses before the administrator together with all books, memoranda, papers, and other documents, articles or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation.

(2) Subpoenas issued in adjudicative proceedings shall be governed by chapter 34.05 RCW.

(3) Subpoenas issued in the conduct of investigations required or authorized by other statutory provisions or necessary in the enforcement of other statutory provisions shall be governed by chapter 34.05 RCW. [1991 c 200 § 407.]

43.21I.900 Effective dates—Severability—1991 c 200. See RCW 90.56.901 and 90.56.904.

Chapter 43.22

DEPARTMENT OF LABOR AND INDUSTRIES

Sections

43.22.495 Manufactured housing—Department of community development duties.

43.22.495 Manufactured housing—Department of community development duties. Beginning on July 1, 1991, the department of community development shall be responsible for performing all the consumer complaint and related functions of the state administrative agency that are required for purposes of complying with the regulations established by the federal department of housing and urban development for manufactured housing, including the preparation and submission of the state administrative plan.

The department of community development may enter into state or local interagency agreements to coordinate site inspection activities with record monitoring and complaint handling. The interagency agreement may also provide for the reimbursement for cost of work that an agency performs. The department may include other related areas in any interagency agreements which are necessary for the efficient provision of services.

The department of labor and industries shall transfer all records, files, books, and documents necessary for the department of community development to assume these new functions.

The directors of the department of community development and the department of labor and industries shall immediately take such steps as are necessary to ensure that *this act is implemented on June 7, 1990. [1990 c 176 § 1.]

*Reviser's note: "This act" consisted of the enactment of RCW 43.22.495, 43.63A.460, 46.12.295, and a vetoed section.

Department of community development duties: RCW 43.63A.460.

Chapter 43.23

DEPARTMENT OF AGRICULTURE

Sections

43.23.010 Divisions of department—Assistant directors—State veterinarian—Salaries—Assignment of duties.

43.23.010 Divisions of department—Assistant directors—State veterinarian—Salaries—Assignment of duties. In order to obtain maximum efficiency and effectiveness within the department of agriculture, the director may create such administrative divisions within the department as he or she deems necessary. The director shall appoint a deputy director as well as such assistant directors as shall be needed to administer the several divisions within the department. The director shall appoint no more than eight assistant directors. The officers appointed under this section are exempt from the provisions of the state civil service law as provided in RCW 41.06.070(7), and shall be paid salaries to be fixed by the governor in accordance with the procedure established by law for the fixing of salaries for officers

exempt from the operation of the state civil service law. The director shall also appoint and deputize a state veterinarian who shall be an experienced veterinarian properly licensed to practice veterinary medicine in this state.

The director of agriculture shall have charge and general supervision of the department and may assign supervisory and administrative duties other than those specified in RCW 43.23.070 to the division which in his or her judgment can most efficiently carry on those functions. [1990 c 37 § 1; 1983 c 248 § 3; 1967 c 240 § 1; 1965 c 8 § 43.23.010. Prior: 1951 c 170 § 1; 1921 c 7 § 83; RRS § 10841.]

Severability—1967 c 240: "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 240 § 52.] For codification of 1967 c 240, see Codification Tables, Volume 0.

Division of apiculture: RCW 15.60.010.

Chapter 43.31

DEPARTMENT OF TRADE AND ECONOMIC DEVELOPMENT

Sections

43.31.005 Findings.
 43.31.035 Economic development coordination and cooperation through 43.31.089 Repealed. (Effective June 30, 1994.)
 43.31.083 Business assistance center—Termination.
 43.31.091 Business assistance center—Repeal.
 43.31.092 Local economic development service program—Associate development organizations.
 43.31.097 Foreign offices—Promotion of overseas trade and commerce.
 43.31.145 Hanford reservation—Promotion of sublease for nuclear-related industry.
 43.31.205 Hanford reservation—Tri-cities area—Emphasize work force and facilities.
 43.31.215 Hanford area economic investment fund. (Effective January 1, 1993.)
 43.31.422 Hanford area economic investment fund committee. (Effective January 1, 1993.)
 43.31.425 Hanford area economic investment fund committee—Powers. (Effective January 1, 1993.)
 43.31.428 Child care facility revolving fund—Purpose—Source of funds.
 43.31.502 Child care facility fund committee—Authority to award moneys from fund.
 43.31.506 Marketplace program—Definitions.
 43.31.522 Marketplace program—Generally.
 43.31.524 Marketplace program—Implementation—Report.
 43.31.526 Recycled materials and products—Market development.
 43.31.545 Repealed.
 43.31.552 Repealed.
 43.31.554 Repealed.
 43.31.556 Definitions.
 43.31.601 Timber recovery coordinator—Expiration of section.
 43.31.611 Agency timber task force—Expiration of section.
 43.31.621 Economic recovery coordination board—Expiration of section.
 43.31.631 Department duties—Extension programs—Value-added production—Industrial diversification.
 43.31.641 Sustainable economic development efforts—Community assistance.
 43.31.651 Air transportation options in timber impact areas.
 43.31.661 Repealed.
 43.31.958

43.31.005 Findings. The legislature of the state of Washington finds that economic development is an essential public purpose which requires the active involvement of state government. The state's primary economic strategy is to encourage the retention and expansion of existing businesses, to attract new businesses and industries, to foster the formation of new businesses, and to economically link rural communities with urban areas. In order to aid the citizens of Washington to obtain desirable employment and achieve adequate incomes, it is necessary for the state to encourage balanced growth and economic prosperity and to promote a more diversified and healthy economy throughout the state.

The legislature finds that the state needs to improve its level of employment, business activity, and revenue growth. In order to increase job opportunities and revenues, a broader and more stable economic base is needed. The state shall take primary responsibility to encourage the balanced growth of the economy consistent with the preservation of Washington's quality of life and environment. A healthy economy can be achieved through partnership efforts with the private sector to facilitate increased investment in Washington. It is the policy of the state of Washington to encourage and promote an economic development program that provides sufficient employment opportunities for our current resident work force and those individuals who will enter the state's work force in the future.

The legislature finds that the state of Washington has the potential to become a major world trade gateway. In order for Washington to fulfill its potential and compete successfully with other states and provinces, it must articulate a consistent, long-term trade policy. It is the responsibility of the state to monitor and ensure that such traditional functions of state government as transportation, infrastructure, education, taxation, regulation and public expenditures contribute to the international trade focus the state of Washington must develop. [1990 1st ex.s. c 17 § 68; 1985 c 466 § 1.]

Intent—1990 1st ex.s. c 17: See note following RCW 43.210.010.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Effective date—1985 c 466: "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 June 30, 1985." [1985 c 466 § 96.]

Severability—1985 c 466: "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." [1985 c 466 § 95.]

Headings—1985 c 466: "As used in this act, section headings constitute no part of the law." [1985 c 466 § 77.]

43.31.035 Economic development coordination and cooperation. The department shall pursue a coordinated approach for the state's economic development policies and programs to achieve a more diversified and healthy economy. The department shall support and work cooperatively with other state agencies, public and private organizations, and units of local government, as well as the federal government, to strengthen and coordinate economic development programs throughout the state.

The department's activities shall include, but not be limited to:

(1) Providing economic development advisory assistance to the governor, other state agencies, and the legislature on economic-related issues, and other matters affecting the economic well-being of the state and all its citizens.

(2) Providing staff and support to cabinet level inter-agency economic development coordinating activities.

(3) Representing and monitoring the state's interests with the federal government in its formulation of policies and programs in economic development.

(4) Assisting in the development and implementation of a long-term economic strategy for the state that encourages a balance in economic growth between urban and rural areas and that stimulates economic development in areas not experiencing problems associated with rapid growth, and assisting the continual update of information and strategies contained in the long-term economic program for the state. [1990 1st ex.s. c 17 § 69; 1985 c 466 § 4.]

Intent—1990 1st ex.s. c 17: See note following RCW 43.210.010.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Effective date—Severability—Headings—1985 c 466: See notes following RCW 43.31.005.

43.31.083 through 43.31.089 Repealed. (Effective June 30, 1994.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.31.091 Business assistance center—Termination. The business assistance center and its powers and duties shall be terminated on June 30, 1993, as provided in RCW 43.31.092. [1990 c 297 § 9; 1987 c 348 § 16. Formerly RCW 43.131.343.]

Legislative findings—1987 c 348: See note following RCW 43.31.083.

43.31.092 Business assistance center—Repeal. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 1994:

(1) Section 2, chapter 348, Laws of 1987 and RCW 43.31.083;

(2) Section 11, chapter 466, Laws of 1985, section 3, chapter 348, Laws of 1987, section 2, chapter 430, Laws of 1989 and RCW 43.31.085;

(3) Section 4, chapter 348, Laws of 1987 and RCW 43.31.087; and

(4) Section 5, chapter 348, Laws of 1987 and RCW 43.31.089. [1990 c 297 § 10; 1987 c 348 § 17. Formerly RCW 43.131.344.]

Legislative findings—1987 c 48: See note following RCW 43.31.083.

43.31.097 Local economic development service program—Associate development organizations. (1) There is established in the department the local economic development service program. This program shall coordinate the delivery of economic development services to

local communities or regional areas. It shall encourage a partnership between the public and private sectors and between state and local officials to encourage appropriate economic growth in communities throughout the state.

(2) The department's local economic development service program shall promote local economic development by assisting businesses to start-up, maintain, or expand their operations, by encouraging public infrastructure investment and private capital investment in local communities, and by expanding employment opportunities.

(3) The department's local economic development service program shall, among other things, (a) contract with local economic development nonprofit corporations, called "associate development organizations," for the delivery of economic development services to local communities or regional areas; (b) enter into interagency agreements with appropriate state agencies, such as the department of community development, the department of agriculture, and the employment security department, to coordinate the delivery of economic development services to local communities or regional areas; (c) enter into agreements with other public organizations or institutions that provide economic development services, such as the small business development center, the Washington technology center, community colleges, vocational-technical institutes, the University of Washington, Washington State University, four-year colleges and universities, the federal small business administration, ports, and others, to coordinate the delivery of economic development services to local communities and regional areas; and (d) provide training, through contracts with public or private organizations, and other assistance to associate development organizations to the extent resources allow.

(4) It is the intent of the legislature that the associate development organizations shall promote and coordinate, through local service agreements or other methods, the delivery of economic development services in their areas that are provided by public and private organizations, including state agencies.

(5) The legislature encourages local associate development organizations to form partnerships with other associate development organizations in their region to combine resources for better access to available services, to encourage regional delivery of state services, and to more effectively build the local capacity of communities in the region. [1990 1st ex.s. c 17 § 71.]

Intent—1990 1st ex.s. c 17: See note following RCW 43.210.010.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

43.31.145 Foreign offices—Promotion of overseas trade and commerce. The department is charged with the primary role within state government for the establishment and operation of foreign offices created for the purpose of promoting overseas trade and commerce. [1991 c 24 § 7; 1985 c 466 § 18.]

Effective date—1991 c 24: See RCW 43.290.900.

Effective date—Severability—1985 c 466: See notes following RCW 43.31.005.

43.31.205 Hanford reservation—Promotion of sublease for nuclear-related industry. In an effort to enhance the economy of the Tri-Cities area, the department of trade and economic development is directed to promote the existence of the lease between the state of Washington and the federal government executed September 10, 1964, covering one thousand acres of land lying within the Hanford reservation near Richland, Washington, and the opportunity of subleasing the land to entities for nuclear-related industry, in agreement with the terms of the lease. [1990 c 281 § 2.]

Legislative findings—1990 c 281: "The legislature finds that the one thousand acres of land leased from the federal government to the state of Washington on the Hanford reservation constitutes an unmatched resource for development of high-technology industry, nuclear medicine research, and research into new waste immobilization and reduction techniques. The legislature further finds that continued diversification of the Tri-Cities economy will help stabilize and improve the Tri-Cities economy, and that this effort can be aided by emphasizing the resources of local expertise and nearby facilities." [1990 c 281 § 1.]

43.31.215 Hanford reservation—Tri-cities area—Emphasize work force and facilities. When the department implements programs intended to attract or maintain industrial or high-technology investments in the state, the department shall, to the extent possible, emphasize the following:

(1) The highly skilled and trained work force in the Tri-Cities area;

(2) The world-class research facilities in the area, including the fast flux test facility and the Pacific Northwest laboratories;

(3) The existence of the one thousand acres leased by the state from the federal government for the purpose of nuclear-related industries; and

(4) The ability for high-technology and medical industries to safely dispose of low-level radioactive waste at the Hanford commercial low-level waste disposal facility. [1990 c 281 § 3.]

Legislative findings—1990 c 281: See note following RCW 43.31.205.

43.31.422 Hanford area economic investment fund. (Effective January 1, 1993.) The Hanford area economic investment fund is established in the custody of the state treasurer. Moneys in the fund shall only be used pursuant to the recommendations of the committee created in RCW 43.31.425 and the approval of the director of the department of trade and economic development for Hanford area revolving loan funds, Hanford area infrastructure projects, or other Hanford area economic development and diversification projects, but may not be used for government or nonprofit organization operating expenses. Up to five percent of moneys in the fund may be used for program administration. For the purpose of this chapter "Hanford area" means Benton and Franklin counties. Disbursements from the fund shall be on the authorization of the director of trade and economic development or the director's designee after an affirmative vote of at least six members of the committee created in

RCW 43.31.425 on any recommendations by the committee created in RCW 43.31.425. The fund is subject to the allotment procedures under chapter 43.88 RCW, but no appropriation is required for disbursements. The legislature intends to establish similar economic investment funds for areas that develop low-level radioactive waste disposal facilities. [1991 c 272 § 19.]

Effective dates—1991 c 272: See RCW 81.108.901.

Surcharge on waste generators: RCW 43.200.230, 43.200.233, and 43.200.235.

43.31.425 Hanford area economic investment fund committee. (Effective January 1, 1993.) The Hanford area economic investment fund committee staffed by the local associate development organization is hereby established.

(1) The committee shall have eleven members. The governor shall appoint the members, in consultation with the Hanford area associate development organization and Hanford area elected officials, subject to the following requirements:

(a) All members shall either reside or be employed within the Hanford area.

(b) The committee shall have a balanced membership representing one member each from the elected leadership of Benton county, Franklin county, the city of Richland, the city of Kennewick, the city of Pasco, a Hanford area port district, the labor community, and four members from the Hanford area business and financial community.

(c) Careful consideration shall be given to assure minority representation on the committee.

(2) Each member appointed by the governor shall serve a term of three years, except that of the members first appointed, four shall serve two-year terms and four shall serve one-year terms. A person appointed to fill a vacancy of a member shall be appointed in a like manner and shall serve for only the unexpired term. A member is eligible for reappointment. A member may be removed by the governor for cause.

(3) The governor shall designate a member of the committee as its chairperson. The committee may elect such other officers as it deems appropriate. Six members of the committee constitute a quorum and six affirmative votes are necessary for the transaction of business or the exercise of any power or function of the committee.

(4) The members shall serve without compensation, but are entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties in accordance with RCW 43.03.050 and 43.03.060.

(5) Members shall not be liable to the state, to the fund, or to any other person as a result of their activities, whether ministerial or discretionary, as members except for willful dishonesty or intentional violations of law. The department may purchase liability insurance for members and may indemnify these persons against the claims of others. [1991 c 272 § 20.]

Effective dates—1991 c 272: See RCW 81.108.901.

43.31.428 Hanford area economic investment fund committee—Powers. (Effective January 1, 1993.) The Hanford area economic investment fund committee created under RCW 43.31.425 may:

(1) Adopt bylaws for the regulation of its affairs and the conduct of its business;

(2) Utilize the services of other governmental agencies;

(3) Accept from any federal or state agency loans or grants for the purposes of funding Hanford area revolving loan funds, Hanford area infrastructure projects, or Hanford area economic development projects;

(4) Recommend to the director rules for the administration of the program, including the terms and rates pertaining to its loans, and criteria for awarding grants, loans, and financial guarantees;

(5) Recommend to the director a spending strategy for the moneys in the fund created in RCW 43.31.422. The strategy shall include five and ten year goals for economic development and diversification for use of the moneys in the Hanford area; and

(6) Recommend to the director no more than two allocations eligible for funding per calendar year, with a first priority on Hanford area revolving loan allocations, and Hanford area infrastructure allocations followed by other Hanford area economic development and diversification projects if the committee finds that there are no suitable allocations in the priority allocations described in this section. [1991 c 272 § 21.]

Effective dates—1991 c 272: See RCW 81.108.901.

43.31.502 Child care facility revolving fund—Purpose—Source of funds. (1) A child care facility revolving fund is created. Money in the fund shall be used solely for the purpose of starting or improving a child care facility pursuant to RCW 43.31.085 and 43.31.502 through 43.31.514. Only moneys from private or federal sources may be deposited into this fund.

(2) Funds provided under this section shall not be subject to reappropriation. The child care facility fund committee may use loan and grant repayments and income for the revolving fund program. [1991 c 248 § 1; 1989 c 430 § 3.]

Legislative findings—1989 c 430: "The legislature finds that increasing the availability and affordability of quality child care will enhance the stability of the family and facilitate expanded economic prosperity in the state. The legislature finds that balancing work and family life is a critical concern for employers and employees. The dramatic increase in participation of women in the work force has resulted in a demand for affordable child care exceeding the supply. The future of the state's work force depends in part upon the availability of quality affordable child care. There are not enough child care services and facilities to meet the needs of working parents, the costs of care are often beyond the resources of working parents, and facilities are not located conveniently to work places and neighborhoods. The prospect for labor shortages resulting from the aging of the population and the importance of the quality of the work force to the competitiveness of Washington businesses make the availability of quality child care an important concern for the state's businesses.

The legislature further finds that a partnership between business and child care providers can help the market for child care adjust to the needs of businesses and working families and improve productivity, reduce absenteeism, improve recruitment, and improve morale among Washington's labor force. The legislature further finds that private and

public partnerships and investments are necessary to increase the supply, affordability, and quality of child care in the state." [1989 c 430 § 1.]

Severability—1989 c 430: "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." [1989 c 430 § 12.]

43.31.506 Child care facility fund committee—
Authority to award moneys from fund. The child care facility fund committee is authorized to solicit applications for and award grants and loans from the child care facility fund to assist persons, businesses, or organizations to start a licensed child care facility, or to make capital improvements in an existing licensed child care facility. Grants and loans shall be awarded on a one-time only basis, and shall not be awarded to cover operating expenses beyond the first three months of business. No grant shall exceed twenty-five thousand dollars. No loan shall exceed one hundred thousand dollars. [1991 c 248 § 2; 1989 c 430 § 5.]

Legislative findings—Severability—1989 c 430: See notes following RCW 43.31.502.

43.31.522 Marketplace program—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.31.524 and 43.31.526:

(1) "Department" means the department of trade and economic development.

(2) "Center" means the business assistance center established under RCW 43.31.083.

(3) "Director" means the director of trade and economic development.

(4) "Local nonprofit organization" means a local nonprofit organization organized to provide economic development or community development services, including but not limited to associate development organizations, economic development councils, and community development corporations. [1990 c 57 § 2; 1989 c 417 § 2.]

Finding—1990 c 57; 1989 c 417: "The legislature finds and declares that substantial benefits in increased employment and business activity can be obtained by assisting businesses in identifying opportunities to purchase the goods and services they need from Washington state suppliers rather than from out-of-state suppliers and in identifying new markets for Washington state firms to provide goods and services. The replacement of out-of-state imports with services and manufactured goods produced in-state can be an important source of economic growth in a local community especially in rural areas. Businesses in the state are often unaware that goods and services they purchase from out-of-state suppliers are available from in-state firms with substantial advantages in responsiveness, service, and price. Increasing the economic partnerships between businesses in Washington state can build bridges between urban and rural communities and can result in the identification of additional opportunities for successful economic development initiatives. Providing additional information to businesses regarding in-state sources of goods and services can be a particularly valuable component of revitalization strategies in economically distressed areas. The legislature finds and declares that it is the policy of the state to strengthen the economies of local communities by increasing the economic partnerships between in-state businesses and creating programs to assist businesses in identifying in-state sources of goods and services, and in addition to identify new markets for Washington firms to provide goods and services." [1990 c 57 § 1; 1989 c 417 § 1.]

Severability—1989 c 417: "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." [1989 c 417 § 15.]

43.31.524 Marketplace program—Generally. There is established a Washington marketplace program within the business assistance center established under RCW 43.31.083. The program shall assist businesses to competitively meet their needs for goods and services within Washington state by providing information relating to the replacement of imports or the fulfillment of new requirements with Washington products produced in Washington state. The program shall place special emphasis on strengthening rural economies in economically distressed areas of the state meeting the criteria of an "eligible area" as defined in RCW 82.60.020(3). The Washington marketplace program shall consult with the community revitalization team established pursuant to chapter 43.165 RCW. [1990 c 57 § 3; 1989 c 417 § 3.]

Finding—1990 c 57; 1989 c 417: See note following RCW 43.31.522.

Severability—1989 c 417: See note following RCW 43.31.522.

43.31.526 Marketplace program—Implementation—Report. (1) The department shall contract with local nonprofit organizations in at least three economically distressed areas of the state that meet the criteria of an "eligible area" as defined in RCW 82.60.020(3) to implement the Washington marketplace program in these areas. The department, in order to foster cooperation and linkages between distressed and nondistressed areas and urban and rural areas, may enter into joint contracts with multiple nonprofit organizations. Contracts with economic development organizations to foster cooperation and linkages between distressed and nondistressed areas and urban and rural areas shall be structured by the department and the distressed area marketplace programs. Contracts with economic development organizations shall:

(a) Award contracts based on a competitive bidding process, pursuant to chapter 43.19 RCW;

(b) Give preference to nonprofit organizations representing a broad spectrum of community support; and

(c) Ensure that each location contain sufficient business activity to permit effective program operation.

The department may require that contractors contribute at least twenty percent local funding.

(2) The contracts with local nonprofit organizations shall be for, but not limited to, the performance of the following services for the Washington marketplace program:

(a) Contacting Washington state businesses to identify goods and services they are currently buying or are planning in the future to buy out-of-state and determine which of these goods and services could be purchased on competitive terms within the state;

(b) Identifying locally sold goods and services which are currently provided by out-of-state businesses;

(c) Determining, in consultation with local business, goods and services for which the business is willing to make contract agreements;

(d) Advertising market opportunities described in (c) of this subsection; and

(e) Receiving bid responses from potential suppliers and sending them to that business for final selection.

(3) Contracts may include provisions for charging service fees of businesses that profit as a result of participation in the program.

(4) The center shall also perform the following activities in order to promote the goals of the program:

(a) Prepare promotional materials or conduct seminars to inform communities and organizations about the Washington marketplace program;

(b) Provide technical assistance to communities and organizations interested in developing an import replacement program;

(c) Develop standardized procedures for operating the local component of the Washington marketplace program;

(d) Provide continuing management and technical assistance to local contractors; and

(e) Report by December 31 of each year to the senate economic development and labor committee and to the house of representatives trade and economic development committee describing the activities of the Washington marketplace program. [1990 c 57 § 4; 1989 c 417 § 4.]

Finding—1990 c 57; 1989 c 417: See note following RCW 43.31.522.

Severability—1989 c 417: See note following RCW 43.31.522.

43.31.545 Recycled materials and products—Market development. The department is the lead state agency to assist in establishing and improving markets for recyclable materials generated in the state. [1991 c 319 § 210; 1989 c 431 § 64.]

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

Severability—Section captions not law—1989 c 431: See RCW 70.95.901 and 70.95.902.

Clean Washington center: Chapter 70.95H RCW.

43.31.552 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.31.554 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.31.556 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.31.601 Definitions. For the purposes of RCW 43.31.601 through 43.31.661:

(1) "Board" means the economic recovery coordination board;

(2) "Timber impact area" means a county having a population of less than five hundred thousand, or a city or town located within a county having a population of less than five hundred thousand, and meeting two of the

following three criteria, as determined by the employment security department, for the most recent year such data is available: (a) A lumber and wood products employment location quotient at or above the state average; (b) projected or actual direct lumber and wood products job losses of one hundred positions or more, except counties having a population greater than two hundred thousand but less than five hundred thousand must have direct lumber and wood products job losses of one thousand positions or more; or (c) an annual unemployment rate twenty percent or more above the state average. [1991 c 314 § 2.]

Findings—1991 c 314: "The legislature finds that:

(1) Cutbacks in allowable sales of old growth timber in Washington state pose a substantial threat to the region and the state with massive layoffs, loss of personal income, and declines in state revenues;

(2) The timber impact areas are of critical significance to the state because of their leading role in the overall economic well-being of the state and their importance to the quality of life to all residents of Washington, and that these regions require a special state effort to diversify the local economy;

(3) There are key opportunities to broaden the economic base in the timber impact areas including agriculture, high-technology, tourism, and regional exports; and

(4) A coordinated state, local, and private sector effort offers the greatest potential to promote economic diversification and to provide support for new projects within the region.

The legislature further finds that if a special state effort does not take place the decline in allowable timber sales may result in a loss of six thousand logging and milling jobs; two hundred million dollars in direct wages and benefits; twelve thousand indirect jobs; and three hundred million dollars in indirect wages and benefits.

It is the intent of the legislature to develop comprehensive programs to provide diversified economic development and promote job creation and employment opportunities for the citizens of the timber impact areas." [1991 c 314 § 1.]

43.31.611 Timber recovery coordinator—Expiration of section. (1) The governor shall appoint a timber recovery coordinator. The coordinator shall coordinate the state and federal economic and social programs targeted to timber impact areas.

(2) The coordinator's responsibilities shall include but not be limited to:

(a) Serving as executive secretary of the economic recovery coordination board and directing staff associated with the board.

(b) Chairing the agency timber task force and directing staff associated with the task force.

(c) Coordinating and maximizing the impact of state and federal assistance to timber impact areas.

(d) Coordinating and expediting programs to assist timber impact areas.

(e) Providing the legislature with a status and impact report on the timber recovery program in January 1992.

(3) This section shall expire June 30, 1993. [1991 c 314 § 3.]

Findings—1991 c 314: See note following RCW 43.31.601.

43.31.621 Agency timber task force—Expiration of section. (1) There is established the agency timber task force. The task force shall be chaired by the timber recovery coordinator. It shall be the responsibility of the coordinator that all directives of chapter 314, Laws of

1991 are carried out expeditiously by the agencies represented in the task force. The task force shall consist of the directors, or representatives of the directors, of the following agencies: The department of trade and economic development, department of community development, employment security department, department of social and health services, state board for community college education, state board for vocational education, or its replacement entity, department of natural resources, department of transportation, state energy office, department of wildlife, University of Washington center for international trade in forest products, and department of ecology. The task force may consult and enlist the assistance of the following: The higher education coordinating board, University of Washington college of forest resources, Washington State University school of forestry, Northwest policy center, state superintendent of public instruction, the Evergreen partnership, Washington association of counties, and rural development council.

(2) This section shall expire June 30, 1993. [1991 c 314 § 4.]

Findings—1991 c 314: See note following RCW 43.31.601.

43.31.631 Economic recovery coordination board—Expiration of section. (1) There is established the economic recovery coordination board consisting of one representative, appointed by the governor, from each county that is a timber impact area. The timber recovery coordinator shall also be a member of the board. Each associate development organization from counties that are timber impact areas, in consultation with the county legislative authority, shall submit to the governor the names of three nominees representing different interests in each county. Within sixty days after July 28, 1991, the governor shall select one nominee from each list submitted by associate development organizations. In making the appointments, the governor shall endeavor to ensure that the board represents a diversity of backgrounds. Vacancies shall be filled in the same manner as the original appointment.

(2) The board shall:

(a) Advise the timber recovery coordinator and the agency timber task force on issues relating to timber impact area economic and social development, and review and provide recommendations on proposals for the diversification of the timber impact areas presented to it by the timber recovery coordinator.

(b) Respond to the needs and concerns of citizens at the local level.

(c) Develop strategies for the economic recovery of timber impact areas.

(d) Provide recommendations to the governor, the legislature, and congress on land management and economic and regulatory policies that affect timber impact areas.

(e) Recommend to the legislature any changes or improvements in existing programs designed to benefit timber impact areas.

(3) Members of the board and committees shall receive no compensation but shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060.

(4) This section shall expire June 30, 1993. [1991 c 314 § 6.]

Findings—1991 c 314: See note following RCW 43.31.601.

43.31.641 Department duties—Extension programs—Value-added production—Industrial diversification. The department of trade and economic development, as a member of the agency timber task force and in consultation with the board, shall:

(1) Implement an expanded value-added forest products development industrial extension program. The department shall provide technical assistance to small and medium-sized forest products companies to include:

(a) Secondary manufacturing product development;

(b) Plant and equipment maintenance;

(c) Identification and development of domestic market opportunities;

(d) Building products export development assistance;

(e) At-risk business development assistance;

(f) Business network development; and

(g) Timber impact area industrial diversification.

(2) Provide local contracts for small and medium-sized forest product companies, start-ups, and business organizations for business feasibility, market development, and business network contracts that will benefit value-added production efforts in the industry.

(3) Contract with local business organizations in timber impact areas for development of programs to promote industrial diversification. In addition, the department shall develop an interagency agreement with the department of community development for local capacity-building grants to local governments and community-based organizations in timber impact areas, which may include long-range planning and needs assessments.

For the 1991–93 biennium, the department of trade and economic development shall use funds appropriated for this section for contracts and for no more than two additional staff positions. [1991 c 314 § 7.]

Findings—1991 c 314: See note following RCW 43.31.601.

43.31.651 Sustainable economic development efforts—Community assistance. The department of community development as a part of the agency timber task force and in consultation with the board, shall implement a community assistance program to enable communities to build local capacity for sustainable economic development efforts. The program shall provide resources and technical assistance to timber impact areas.

In addition, the department shall develop an interagency agreement with the department of trade and economic development for local capacity-building grants to local governments and community-based organizations in timber impact areas. [1991 c 314 § 9.]

Findings—1991 c 314: See note following RCW 43.31.601.

43.31.661 Air transportation options in timber impact areas. In order to explore economic diversification options in timber impact areas and address urban congestion, the Washington state air transportation commission study shall consider the possibility of locating an airport facility designed to relieve air traffic overflow from Seattle-Tacoma international airport in Grays Harbor county.

The commission shall consider airport facilities currently in use in Grays Harbor county, the property set aside at the uncompleted Satsop nuclear site, the distance from operating port facilities, the desires of the community, and linkage with the Interstate 5 corridor by rapid transit rail service. [1991 c 314 § 10.]

Findings—1991 c 314: See note following RCW 43.31.601.
Air transportation commission: Chapter 47.86 RCW.

43.31.958 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 43.31A

ECONOMIC ASSISTANCE ACT OF 1972

Sections

43.31A.400 Economic assistance authority abolished—Transfer of duties to department of revenue.

43.31A.400 Economic assistance authority abolished—Transfer of duties to department of revenue. The economic assistance authority established by section 2, chapter 117, Laws of 1972 ex. sess. as amended by section 111, chapter 34, Laws of 1975-'76 2nd ex. sess. is abolished, effective June 30, 1982. Any remaining duties of the economic assistance authority are transferred to the department of revenue on that date. The public facilities construction loan and grant revolving account within the state treasury is continued to service the economic assistance authority's loans. [1991 1st sp.s. c 13 § 27; 1981 c 76 § 4.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Review—Report—1981 c 76: "The economic assistance authority shall be reviewed and analyzed during the interim between the 1981 and 1982 legislative sessions by the ways and means committees of the house of representatives and senate and a report shall be presented, with any recommendations, to the forty-seventh legislature which convenes in January 1, 1982." [1981 c 76 § 3.]

Savings—1981 c 76: "This act does not affect any duty owed by a taxpayer, political subdivision of the state, or Indian tribe under the statutes repealed under section 6 of this act. The duties owed shall be administered as if the laws in section 6 of this act were not repealed. New investment tax deferral certificates under chapter 43.31A RCW shall not be issued on or after June 30, 1982. The deferral of taxes and the repayment schedules under tax deferral certificates issued before June 30, 1982, are not affected." [1981 c 76 § 7.]

Reviser's note: "Section 6 of this act" repealed, effective June 30, 1982, the following sections: RCW 43.31A.010, 43.31A.020, 43.31A.030, 43.31A.040, 43.31A.050, 43.31A.060, 43.31A.070, 43.31A.080, 43.31A.090, 43.31A.100, 43.31A.140, 43.31A.150, 43.31A.200, 43.31A.210, 43.31A.220, 43.31A.230, 43.31A.240, 43.31A.250, 43.31A.260, 43.31A.270, 43.31A.280, 43.31A.290, 43.31A.300, 43.31A.310, 43.31A.330, 43.31A.900, and 43.31A.920.

Severability—1981 c 76: "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." [1981 c 76 § 8.]

Effective dates—1981 c 76: "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. Sections 1 and 2 of this act shall take effect March 1, 1981. Section 3 of this act shall take effect May 1, 1981. Sections 4, 5, 6, and 7 of this act shall take effect June 30, 1982." [1981 c 76 § 9.] Sections 1, 2, and 5 consist of the 1981 c 76 amendments to RCW 43.31A.130, 43.31A.140, and 43.31A.110, respectively; sections 3 and 7 are noted above; section 4 consists of the enactment of RCW 43.31A.400; and section 6 is a repealer (see reviser's note above).

Chapter 43.33A

STATE INVESTMENT BOARD

Sections

43.33A.160 Funding of board—State investment board expense account.

43.33A.160 Funding of board—State investment board expense account. (1) The state investment board shall be funded from the earnings of the funds managed by the state investment board, proportional to the value of the assets of each fund, subject to legislative appropriation.

(2) There is established in the state treasury a state investment board expense account from which shall be paid the operating expenses of the state investment board. Prior to November 1 of each even-numbered year, the state investment board shall determine and certify to the state treasurer and the office of financial management the value of the various funds managed by the investment board in order to determine the proportional liability of the funds for the operating expenses of the state investment board. Pursuant to appropriation, the state treasurer is authorized to transfer such moneys from the various funds managed by the investment board to the state investment board expense account as are necessary to pay the operating expenses of the investment board. [1991 1st sp.s. c 13 § 32; 1985 c 57 § 32; 1982 c 10 § 10. Prior: 1981 c 242 § 1; 1981 c 219 § 5; 1981 c 3 § 16.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

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

Severability—1982 c 10: See note following RCW 6.13.080.

Effective dates—1981 c 242: See note following RCW 43.79.330.

Effective dates—1981 c 219: See note following RCW 43.33A.020.

Effective dates—Severability—1981 c 3: See notes following RCW 43.33A.010.

Chapter 43.34

CAPITOL COMMITTEE

Sections

43.34.080 Capitol campus design advisory committee—Generally.

43.34.080 Capitol campus design advisory committee—Generally. (1) The capitol campus design advisory committee is established as an advisory group to the capitol committee and the director of general administration to review programs, planning, design, and landscaping of state capitol facilities and grounds and to make recommendations that will contribute to the attainment of architectural, aesthetic, functional, and environmental excellence in design and maintenance of capitol facilities on campus and located in neighboring communities.

(2) The advisory committee shall consist of the following persons who shall be appointed by and serve at the pleasure of the governor:

- (a) Two architects;
- (b) A landscape architect; and
- (c) An urban planner.

The governor shall appoint the chair and vice-chair and shall instruct the director of general administration to provide the staff and resources necessary for implementing this section. The advisory committee shall meet at least once every ninety days and at the call of the chair.

The members of the committee shall be reimbursed as provided in RCW 43.03.220 and 44.04.120.

(3) The advisory committee shall also consist of the secretary of state and two members of the house of representatives, one from each caucus, who shall be appointed by the speaker of the house of representatives, and two members of the senate, one from each caucus, who shall be appointed by the president of the senate.

(4) The advisory committee shall review plans and designs affecting state capitol facilities as they are developed. The advisory committee's review shall include:

(a) The process of solicitation and selection of appropriate professional design services including design-build proposals;

(b) Compliance with the capitol campus master plan and design concepts as adopted by the capitol committee;

(c) The design, siting, and grouping of state capitol facilities relative to the service needs of state government and the impact upon the local community's economy, environment, traffic patterns, and other factors;

(d) The relationship of overall state capitol facility planning to the respective comprehensive plans for long-range urban development of the cities of Olympia, Lacey, and Tumwater, and Thurston county; and

(e) Landscaping plans and designs, including planting proposals, street furniture, sculpture, monuments, and access to the capitol campus and buildings. [1990 c 93 § 1.]

Chapter 43.43

WASHINGTON STATE PATROL

Sections

43.43.035 Governor, lieutenant governor, and governor-elect—Security and protection—Duty to provide.

43.43.170	Repealed.
43.43.175	Repealed.
43.43.180	Repealed.
43.43.190	Repealed.
43.43.225	Repealed.
43.43.280	Repayment of contributions on death or termination of employment—Election to receive reduced retirement allowance at age fifty-five.
43.43.310	Benefits exempt from taxation and legal process—Assignability—Exceptions—Deductions for group insurance premiums or for state patrol memorial foundation contributions.
43.43.390	Bicycle awareness program—Generally.
43.43.540	Sex offenders—Central registry—Reimbursement to counties.
43.43.735	Photographing and fingerprinting—Powers and duties of law enforcement agencies, department of licensing, and courts—Other data.
43.43.745	Convicted persons, fingerprinting required, records—Furloughs, information to section, notice to local agencies—Arrests, disposition information—Convicts, information to section, notice to local agencies—Registration of sex offenders.
43.43.754	DNA identification system—Sex offenders, blood analysis.
43.43.758	DNA identification system—Local law enforcement systems—Limitations.
43.43.759	DNA identification system—Rule-making requirements.
43.43.765	Reports of transfer, release or changes as to committed or imprisoned persons—Records.
43.43.830	Background checks—Access to children or vulnerable persons—Definitions (as amended by 1990 c 3).
43.43.830	Background checks—Access to children or vulnerable persons—Definitions (as amended by 1990 c 146).
43.43.832	Background checks—Disclosure of child abuse or financial exploitation activity.
43.43.834	Background checks by business, organization, or insurance company—Limitations—Civil liability.
43.43.838	Background checks—Transcript of conviction record, disciplinary board decision, criminal charges, or civil adjudication—Finding of no evidence, identification document—Immunity—Rules.
43.43.845	Crimes against children—Notification of conviction or guilty plea of school employee.

43.43.035 Governor, lieutenant governor, and governor-elect—Security and protection—Duty to provide. The chief of the Washington state patrol is directed to provide security and protection for the governor, the governor's family, and the lieutenant governor to the extent and in the manner the governor and the chief of the Washington state patrol deem adequate and appropriate.

In the same manner the chief of the Washington state patrol is directed to provide security and protection for the governor-elect from the time of the November election. [1991 c 63 § 1; 1965 ex.s. c 96 § 1.]

43.43.170 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.43.175 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.43.180 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.43.190 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.43.225 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.43.280 Repayment of contributions on death or termination of employment—Election to receive reduced retirement allowance at age fifty-five. (1) If a member dies before retirement, and has no surviving spouse or children under the age of eighteen years, all contributions made by the member with interest as determined by the director, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to such person or persons as the member shall have nominated by written designation duly executed and filed with the department, or if there be no such designated person or persons, then to the member's legal representative.

(2) If a member should cease to be an employee before attaining age sixty for reasons other than the member's death, or retirement, the individual shall thereupon cease to be a member except as provided under RCW 43.43.130 (2) and (3) and, the individual may withdraw the member's contributions to the retirement fund, with interest as determined by the director, by making application therefor to the department, except that: A member who ceases to be an employee after having completed at least five years of service shall remain a member during the period of the member's absence from employment for the exclusive purpose only of receiving a retirement allowance to begin at attainment of age sixty, however such a member may upon written notice to the department elect to receive a reduced retirement allowance on or after age fifty-five which allowance shall be the actuarial equivalent of the sum necessary to pay regular retirement benefits as of age sixty: PROVIDED, That if such member should withdraw all or part of the member's accumulated contributions, the individual shall thereupon cease to be a member and this subsection shall not apply. [1991 c 365 § 32; 1987 c 215 § 2; 1982 1st ex.s. c 52 § 29; 1973 1st ex.s. c 180 § 5; 1969 c 12 § 7; 1965 c 8 § 43.43.280. Prior: 1961 c 93 § 3; 1951 c 140 § 7; 1947 c 250 § 17; Rem. Supp. 1947 § 6363-97.]

Severability—1991 c 365: See note following RCW 41.50.500.

Effective date—1987 c 215: See note following RCW 43.43.130.

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

Construction—1969 c 12: See note following RCW 43.43.120.

43.43.310 Benefits exempt from taxation and legal process—Assignability—Exceptions—Deductions for group insurance premiums or for state patrol memorial foundation contributions. (1) Except as provided in subsections (2) and (3) of this section, the right of any person to a retirement allowance or optional retirement allowance under the provisions hereof and all moneys

and investments and income thereof are exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or the insolvency laws, or other processes of law whatsoever and shall be unassignable except as herein specifically provided.

(2) Subsection (1) of this section shall not prohibit the department of retirement systems from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued pursuant to chapter 41.50 RCW, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(3) Subsection (1) of this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of members of the Washington state patrol or other public employees of the state of Washington, or for contributions to the Washington state patrol memorial foundation. [1991 c 365 § 23; 1989 c 360 § 29. Prior: 1987 c 326 § 25; 1987 c 63 § 1; 1982 1st ex.s. c 52 § 31; 1979 ex.s. c 205 § 8; 1977 ex.s. c 256 § 1; 1965 c 8 § 43.43.310; prior: 1951 c 140 § 8; 1947 c 250 § 20; Rem. Supp. 1947 § 6362-100.]

Severability—1991 c 365: See note following RCW 41.50.500.

Effective date—1987 c 326: See RCW 41.50.901.

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

43.43.390 Bicycle awareness program—Generally. Bicycling is increasing in popularity as a form of recreation and as an alternative mode of transportation. To make bicycling safer, the various law enforcement agencies should enforce traffic regulations for bicyclists. By enforcing bicycle regulations, law enforcement officers are reinforcing educational programs. Bicycling takes more skill than most people realize. Since bicyclists have a low profile in traffic and are unprotected, they need more defensive riding skills than motorists do.

A bicycle awareness program is created within the Washington state patrol. In developing the curriculum for the bicycle awareness program the patrol shall consult with the traffic safety commission and with bicycling groups providing bicycle safety education. The patrol shall conduct the program in conjunction with the safety education officer program and may use other law enforcement personnel and volunteers to implement the program for children in grades kindergarten through six. The patrol shall ensure that each safety educator presenting the bicycle awareness program has received specialized training in bicycle safety education and has

been trained in effective defensive bicycle riding skills. [1991 c 214 § 1.]

Bicycle transportation management program: RCW 47.04.190.

43.43.540 Sex offenders—Central registry—Reimbursement to counties. The county sheriff shall forward the information and fingerprints obtained pursuant to RCW 9A.44.130 to the Washington state patrol within five working days. The state patrol shall maintain a central registry of sex offenders required to register under RCW 9A.44.130 and shall adopt rules consistent with chapters 10.97, 10.98, and 43.43 RCW as are necessary to carry out the purposes of RCW 9A.44.130, 9A.44.140, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330. The Washington state patrol shall reimburse the counties for the costs of processing the sex offender registration, including taking the fingerprints and the photographs. [1990 c 3 § 403.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.
Sex offense defined: RCW 9A.44.130.

43.43.735 Photographing and fingerprinting—Powers and duties of law enforcement agencies, department of licensing, and courts—Other data. (1) It shall be the duty of the sheriff or director of public safety of every county, and the chief of police of every city or town, and of every chief officer of other law enforcement agencies duly operating within this state, to cause the photographing and fingerprinting of all adults and juveniles lawfully arrested for the commission of any criminal offense constituting a felony or gross misdemeanor. (a) When such juveniles are brought directly to a juvenile detention facility, the juvenile court administrator is also authorized, but not required, to cause the photographing, fingerprinting, and record transmittal to the appropriate law enforcement agency; and (b) a further exception may be made when the arrest is for a violation punishable as a gross misdemeanor and the arrested person is not taken into custody.

(2) It shall be the right, but not the duty, of the sheriff or director of public safety of every county, and the chief of police of every city or town, and every chief officer of other law enforcement agencies operating within this state to photograph and record the fingerprints of all adults lawfully arrested, all persons who are the subject of dependency record information, or all persons who are the subject of protection proceeding record information.

(3) Such sheriffs, directors of public safety, chiefs of police, and other chief law enforcement officers, may record, in addition to photographs and fingerprints, the palmprints, soleprints, toeprints, or any other identification data of all persons whose photograph and fingerprints are required or allowed to be taken under this section, all persons who are the subject of dependency record information, or all persons who are the subject of protection proceeding record information, when in the discretion of such law enforcement officers it is necessary for proper identification of the arrested person or the investigation of the crime with which he is charged.

(4) It shall be the duty of the department of health or the court having jurisdiction over the dependency action and protection proceedings under chapter 74.34 RCW to cause the fingerprinting of all persons who are the subject of a disciplinary board final decision, dependency record information, protection proceeding record information, or to obtain other necessary identifying information, as specified by the section in rules adopted under chapter 34.05 RCW to carry out the provisions of this subsection.

(5) The court having jurisdiction over the dependency or protection proceeding action may obtain and record, in addition to fingerprints, the photographs, palmprints, soleprints, toeprints, or any other identification data of all persons who are the subject of dependency record information or protection proceeding record information, when in the discretion of the court it is necessary for proper identification of the person. [1991 c 3 § 297. Prior: 1989 c 334 § 9; 1989 c 6 § 2; prior: 1987 c 486 § 12; 1987 c 450 § 2; 1985 c 201 § 13; 1972 ex.s. c 152 § 8.]

43.43.745 Convicted persons, fingerprinting required, records—Furloughs, information to section, notice to local agencies—Arrests, disposition information—Convicts, information to section, notice to local agencies—Registration of sex offenders. (1) It shall be the duty of the sheriff or director of public safety of every county, of the chief of police of each city or town, or of every chief officer of other law enforcement agencies operating within this state, to record the fingerprints of all persons held in or remanded to their custody when convicted of any crime as provided for in RCW 43.43.735 for which the penalty of imprisonment might be imposed and to disseminate and file such fingerprints in the same manner as those recorded upon arrest pursuant to RCW 43.43.735 and 43.43.740.

(2) Every time the secretary authorizes a furlough as provided for in RCW 72.66.012 the department of corrections shall notify, forty-eight hours prior to the beginning of such furlough, the section that the named prisoner has been granted a furlough, the place to which furloughed, and the dates and times during which the prisoner will be on furlough status. In the case of an emergency furlough the forty-eight hour time period shall not be required but notification shall be made as promptly as possible and before the prisoner is released on furlough. Upon receipt of furlough information pursuant to the provisions of this subsection the section shall notify the sheriff or director of public safety of the county to which the prisoner is being furloughed, the nearest attachment of the Washington state patrol in the county wherein the furloughed prisoner shall be residing and such other criminal justice agencies as the section may determine should be so notified.

(3) Disposition of the charge for which the arrest was made shall be reported to the section at whatever stage in the proceedings a final disposition occurs by the arresting law enforcement agency, county prosecutor, city attorney, or court having jurisdiction over the offense:

PROVIDED, That the chief shall promulgate rules pursuant to chapter 34.05 RCW to carry out the provisions of this subsection.

(4) Whenever a person serving a sentence for a term of confinement in a state correctional facility for convicted felons, pursuant to court commitment, is released on an order of the state indeterminate sentence review board, or is discharged from custody on expiration of sentence, the department of corrections shall promptly notify the section that the named person has been released or discharged, the place to which such person has been released or discharged, and the conditions of his release or discharge, and shall additionally notify the section of change in residence or conditions of release or discharge of persons on active parole supervision, and shall notify the section when persons are discharged from active parole supervision.

Local law enforcement agencies may require persons convicted of sex offenses to register pursuant to RCW 9A.44.130. In addition, nothing in this section shall be construed to prevent any local law enforcement authority from recording the residency and other information concerning any convicted felon or other person convicted of a criminal offense when such information is obtained from a source other than from registration pursuant to RCW 9A.44.130 which source may include any officer or other agency or subdivision of the state. [1990 c 3 § 409; 1985 c 346 § 6; 1973 c 20 § 1; 1972 ex.s. c 152 § 10.]

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

Construction—Prior rules and regulations—1973 c 20: See note following RCW 72.66.010.

43.43.754 DNA identification system—Sex offenders, blood analysis. After July 1, 1990, every individual convicted in a Washington superior court of a felony defined as a sex offense under RCW 9.94A.030(29)(a) or a violent offense as defined in *RCW 9.94A.030(32) shall have a blood sample drawn for purposes of DNA identification analysis. For persons convicted of such offenses after July 1, 1990, who are serving a term of confinement in a county jail or detention facility, the county shall be responsible for obtaining blood samples prior to release from the county jail or detention facility. For persons convicted of such offenses after July 1, 1990, who are serving a term of confinement in a department of corrections facility, the department shall be responsible for obtaining blood samples prior to release from such facility. Any blood sample taken pursuant to RCW 43.43.752 through 43.43.758 shall be used solely for the purpose of providing DNA or other blood grouping tests for identification analysis and prosecution of a sex offense or a violent offense. [1990 c 230 § 3; 1989 c 350 § 4.]

*Reviser's note: RCW 9.94A.030(32) was renumbered as RCW 9.94A.030(33) by 1990 c 3.

Finding—Funding limitations—1989 c 350: See notes following RCW 43.43.752.

43.43.758 DNA identification system—Local law enforcement systems—Limitations. (1) Except as provided in subsection (2) of this section, no local law enforcement agency may establish or operate a DNA identification system before July 1, 1990, and unless:

(a) The equipment of the local system is compatible with that of the state system under RCW 43.43.752;

(b) The local system is equipped to receive and answer inquiries from the Washington state patrol DNA identification system and transmit data to the Washington state patrol DNA identification system; and

(c) The procedure and rules for the collection, analysis, storage, expungement, and use of DNA identification data do not conflict with procedures and rules applicable to the state patrol DNA identification system.

(2) Nothing in this section shall prohibit a local law enforcement agency from performing DNA identification analysis in individual cases to assist law enforcement officials and prosecutors in the preparation and use of DNA evidence for presentation in court. [1990 c 230 § 2; 1989 c 350 § 6.]

Finding—Funding limitations—1989 c 350: See notes following RCW 43.43.752.

43.43.759 DNA identification system—Rule-making requirements. The Washington state patrol shall adopt rules to implement RCW 43.43.752 through 43.43.758. The rules shall prohibit the use of DNA identification data for any research or other purpose that is not related to a criminal investigation or to improving the operation of the system authorized by RCW 43.43.752 through 43.43.758. [1990 c 230 § 1.]

43.43.765 Reports of transfer, release or changes as to committed or imprisoned persons—Records. The principal officers of the jails, correctional institutions, state mental institutions and all places of detention to which a person is committed under chapter 10.77 RCW, chapter 71.06 RCW, or chapter 71.09 RCW for treatment or under a sentence of imprisonment for any crime as provided for in RCW 43.43.735 shall within seventy-two hours, report to the section, any interinstitutional transfer, release or change of release status of any person held in custody pursuant to the rules promulgated by the chief.

The principal officers of all state mental institutions to which a person has been committed under chapter 10.77 RCW, chapter 71.06 RCW, or chapter 71.09 RCW shall keep a record of the photographs, description, fingerprints, and other identification data as may be obtainable from the appropriate criminal justice agency. [1990 c 3 § 131; 1983 c 3 § 108; 1972 ex.s. c 152 § 14.]

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

43.43.830 Background checks—Access to children or vulnerable persons—Definitions (as amended by 1990 c 3). Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.43.830 through 43.43.840.

(1) "Applicant" means ((either)):

(a) Any prospective employee who will or may have unsupervised access to children under sixteen years of age or developmentally disabled persons or vulnerable adults during the course of his or her employment or involvement with the business or organization (~~(-However, for school districts and educational service districts, prospective employee includes only noncertificated personnel)~~); or

(b) Any prospective volunteer who will have regularly scheduled unsupervised access to children under sixteen years of age, developmentally disabled persons, or vulnerable adults during the course of his or her employment or involvement with the business or organization under circumstances where such access will or may involve groups of (i) five or fewer children under twelve years of age, (ii) three or fewer children between twelve and sixteen years of age, (iii) developmentally disabled persons, or (iv) vulnerable adults.

(2) "Business or organization" means a business or organization licensed in this state, any agency of the state, or other governmental entity, that educates, trains, treats, supervises, or provides recreation to developmentally disabled persons, vulnerable adults, or children under sixteen years of age, including school districts and educational service districts.

(3) "Civil adjudication" means a specific court finding of sexual abuse or exploitation or physical abuse in a dependency action under RCW (~~(13.34.030(2)(b))~~) 13.34.040 or in a domestic relations action under Title 26 RCW. In the case of vulnerable adults, civil adjudication means a specific court finding of abuse or financial exploitation in a protection proceeding under chapter 74.34 RCW. It does not include administrative proceedings. The term "civil adjudication" is further limited to court findings that identify as the perpetrator of the abuse a named individual, over the age of eighteen years, who was a party to the dependency or dissolution proceeding or was a respondent in a protection proceeding in which the finding was made and who contested the allegation of abuse or exploitation.

(4) "Conviction record" means "conviction record" information as defined in RCW 10.97.030(3) relating to a crime against children or other persons committed by either an adult or a juvenile. It does not include a conviction for an offense that has been the subject of an expungement, pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or a conviction that has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. It does include convictions for offenses for which the defendant received a deferred or suspended sentence, unless the record has been expunged according to law.

(5) (~~"Disciplinary board final decision" means any final decision issued by the disciplinary board or the director of the department of licensing for the following business or professions:~~

- (a) Chiropractic;
- (b) Dentistry;
- (c) Dental hygiene;
- (d) Drugless healing;
- (e) Massage;
- (f) Midwifery;
- (g) Osteopathy;
- (h) Physical therapy;
- (i) Physicians;
- (j) Practical nursing;
- (k) Registered nursing;
- (l) Psychology; and
- (m) Real estate brokers and salesmen.

(6)) "Crime against children or other persons" means a conviction of any of the following offenses: Aggravated murder; first or second degree murder; first or second degree kidnaping; first, second, or third degree assault; first, second, or third degree rape; first, second, or third degree rape of a child; first or second degree robbery; first degree arson; first degree burglary; first or second degree manslaughter; first or second degree extortion; indecent liberties; incest; vehicular homicide; first degree promoting prostitution; communication with a minor; unlawful imprisonment; simple assault; sexual exploitation of minors; first or second degree criminal mistreatment; child abuse or neglect as defined in RCW 26.44.020; first or second degree custodial interference; malicious harassment; first, second, or third degree child molestation; first or second degree sexual misconduct with a minor; first or second degree rape of a child; patronizing a juvenile prostitute; child abandonment; promoting pornography; selling or distributing erotic

material to a minor; custodial assault; violation of child abuse restraining order; child buying or selling; prostitution; felony indecent exposure; or any of these crimes as they may be renamed in the future.

~~((7))~~ (6) "Crimes relating to financial exploitation" means a conviction for first, second, or third degree extortion; first, second, or third degree theft; first or second degree robbery; forgery; or any of these crimes as they may be renamed in the future.

(7) "Disciplinary board final decision" means any final decision issued by the disciplinary board or the director of the department of licensing for the following businesses or professions:

- (a) Chiropractic;
- (b) Dentistry;
- (c) Dental hygiene;
- (d) Massage;
- (e) Midwifery;
- (f) Naturopathy;
- (g) Osteopathy;
- (h) Physical therapy;
- (i) Physicians;
- (j) Practical nursing;
- (k) Registered nursing;
- (l) Psychology; and
- (m) Real estate brokers and salesmen.

(8) "Unsupervised" means not in the presence of:

(a) Another employee or volunteer from the same business or organization as the applicant; or

(b) Any relative or guardian of any of the children or developmentally disabled persons to which the applicant has access during the course of his or her employment or involvement with the business or organization.

(9) "Vulnerable adult" means a person sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself or a patient in a state hospital as defined in chapter 72.23 RCW.

(10) "Financial exploitation" means the illegal or improper use of a vulnerable adult or that adult's resources for another person's profit or advantage.

(11) "Agency" means any person, firm, partnership, association, corporation, or facility which receives, provides services to, houses or otherwise cares for vulnerable adults. [1990 c 3 § 1101. Prior: 1989 c 334 § 1; 1989 c 90 § 1; 1987 c 486 § 1.]

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

43.43.830 Background checks—Access to children or vulnerable persons—Definitions (as amended by 1990 c 146). Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.43.830 through 43.43.840.

(1) "Applicant" means either:

(a) Any prospective employee who will or may have unsupervised access to children under sixteen years of age or developmentally disabled persons or vulnerable adults during the course of his or her employment or involvement with the business or organization. However, for school districts and educational service districts, prospective employee includes only noncertificated personnel; ~~((or))~~

(b) Any prospective volunteer who will have regularly scheduled unsupervised access to children under sixteen years of age, developmentally disabled persons, or vulnerable adults during the course of his or her employment or involvement with the business or organization under circumstances where such access will or may involve groups of (i) five or fewer children under twelve years of age, (ii) three or fewer children between twelve and sixteen years of age, (iii) developmentally disabled persons, or (iv) vulnerable adults; or

(c) Any prospective adoptive parent, as defined in RCW 26.33.020.

(2) "Business or organization" means a business or organization licensed in this state, any agency of the state, or other governmental entity, that educates, trains, treats, supervises, or provides recreation to developmentally disabled persons, vulnerable adults, or children under sixteen years of age, including school districts and educational service districts.

(3) "Civil adjudication" means a specific court finding of sexual abuse or exploitation or physical abuse in a dependency action under RCW (~~(13.34.030(2)(b))~~) 13.34.040 or in a domestic relations action under Title 26 RCW. In the case of vulnerable adults, civil adjudication means a specific court finding of abuse or financial exploitation in a protection proceeding under chapter 74.34 RCW. It does not include

administrative proceedings. The term "civil adjudication" is further limited to court findings that identify as the perpetrator of the abuse a named individual, over the age of eighteen years, who was a party to the dependency or dissolution proceeding or was a respondent in a protection proceeding in which the finding was made and who contested the allegation of abuse or exploitation.

(4) "Conviction record" means "conviction record" information as defined in RCW 10.97.030(3) relating to a crime against children or other persons committed by either an adult or a juvenile. It does not include a conviction for an offense that has been the subject of an expungement, pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or a conviction that has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. It does include convictions for offenses for which the defendant received a deferred or suspended sentence, unless the record has been expunged according to law.

(5) "Disciplinary board final decision" means any final decision issued by the disciplinary board or the director of the department of licensing for the following business or professions:

- (a) Chiropractic;
- (b) Dentistry;
- (c) Dental hygiene;
- (d) (~~Drugs~~ ~~healing~~) Naturopathy;
- (e) Massage;
- (f) Midwifery;
- (g) Osteopathy;
- (h) Physical therapy;
- (i) Physicians;
- (j) Practical nursing;
- (k) Registered nursing;
- (l) Psychology; and
- (m) Real estate brokers and salesmen.

(6) "Crime against children or other persons" means a conviction of any of the following offenses: Aggravated murder; first or second degree murder; first or second degree kidnaping; first, second, or third degree assault; first, second, or third degree rape; first, second, or third degree rape of a child; first or second degree robbery; first degree arson; first degree burglary; first or second degree manslaughter; first or second degree extortion; indecent liberties; incest; vehicular homicide; first degree promoting prostitution; communication with a minor; unlawful imprisonment; simple assault; sexual exploitation of minors; first or second degree criminal mistreatment; child abuse or neglect as defined in RCW 26.44.020; first or second degree custodial interference; malicious harassment; first, second, or third degree child molestation; first or second degree sexual misconduct with a minor; first or second degree rape of a child; patronizing a juvenile prostitute; child abandonment; promoting pornography; selling or distributing erotic material to a minor; custodial assault; violation of child abuse restraining order; child buying or selling; prostitution; or any of these crimes as they may be renamed in the future.

(7) "Crimes relating to financial exploitation" means a conviction for first, second, or third degree extortion; first, second, or third degree theft; first or second degree robbery; forgery; or any of these crimes as they may be renamed in the future.

(8) "Unsupervised" means not in the presence of:

(a) Another employee or volunteer from the same business or organization as the applicant; or

(b) Any relative or guardian of any of the children or developmentally disabled persons to which the applicant has access during the course of his or her employment or involvement with the business or organization.

(9) "Vulnerable adult" means a person sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself or a patient in a state hospital as defined in chapter 72.23 RCW.

(10) "Financial exploitation" means the illegal or improper use of a vulnerable adult or that adult's resources for another person's profit or advantage.

(11) "Agency" means any person, firm, partnership, association, corporation, or facility which receives, provides services to, houses or otherwise cares for vulnerable adults. [1990 c 146 § 8. Prior: 1989 c 334 § 1; 1989 c 90 § 1; 1987 c 486 § 1.]

Reviser's note: RCW 43.43.830 was amended twice during the 1990 legislative session, each without reference to the other. For rule of

construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Developmentally disabled persons: RCW 41.06.475.

State hospitals: RCW 72.23.035.

43.43.832 Background checks—Disclosure of child abuse or financial exploitation activity. (1) The legislature finds that businesses and organizations providing services to children, developmentally disabled persons, and vulnerable adults need adequate information to determine which employees or licensees to hire or engage. Therefore, the Washington state patrol criminal identification system may disclose, upon the request of a business or organization as defined in RCW 43.43.830, an applicant's record for convictions of offenses against children or other persons, convictions for crimes relating to financial exploitation, but only if the victim was a vulnerable adult, adjudications of child abuse in a civil action, the issuance of a protection order against the respondent under chapter 74.34 RCW, and disciplinary board final decisions and any subsequent criminal charges associated with the conduct that is the subject of the disciplinary board final decision. When necessary, applicants may be employed on a conditional basis pending completion of such a background investigation.

(2) The legislature also finds that the state board of education may request of the Washington state patrol criminal identification system information regarding a certificate applicant's record for convictions under subsection (1) of this section.

(3) The legislature also finds that law enforcement agencies, the office of the attorney general, prosecuting authorities, and the department of social and health services may request this same information to aid in the investigation and prosecution of child, developmentally disabled person, and vulnerable adult abuse cases and to protect children and adults from further incidents of abuse.

(4) The legislature further finds that the department of social and health services, when considering persons for state positions directly responsible for the care, supervision, or treatment of children, developmentally disabled persons, or vulnerable adults or when licensing or authorizing such persons or agencies pursuant to its authority under chapter 74.15, 18.51, 18.20, or 72.23 RCW, or any later-enacted statute which purpose is to license or regulate a facility which handles vulnerable adults, must consider the information listed in subsection (1) of this section. However, when necessary, persons may be employed on a conditional basis pending completion of the background investigation. The state personnel board shall adopt rules to accomplish the purposes of this subsection as it applies to state employees. [1990 c 3 § 1102. Prior: 1989 c 334 § 2; 1989 c 90 § 2; 1987 c 486 § 2.]

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

43.43.834 Background checks by business, organization, or insurance company—Limitations—Civil liability. (1) A business or organization shall not make an

inquiry to the Washington state patrol under RCW 43.43.832 or an equivalent inquiry to a federal law enforcement agency unless the business or organization has notified the applicant who has been offered a position as an employee or volunteer, that an inquiry may be made.

(2) A business or organization shall require each applicant to disclose to the business or organization whether the applicant has been:

(a) Convicted of any crime against children or other persons;

(b) Convicted of crimes relating to financial exploitation if the victim was a vulnerable adult;

(c) Found in any dependency action under RCW 13.34.040 to have sexually assaulted or exploited any minor or to have physically abused any minor;

(d) Found by a court in a domestic relations proceeding under Title 26 RCW to have sexually abused or exploited any minor or to have physically abused any minor;

(e) Found in any disciplinary board final decision to have sexually or physically abused or exploited any minor or developmentally disabled person or to have abused or financially exploited any vulnerable adult; or

(f) Found by a court in a protection proceeding under chapter 74.34 RCW, to have abused or financially exploited a vulnerable adult.

The disclosure shall be made in writing and signed by the applicant and sworn under penalty of perjury. The disclosure sheet shall specify all crimes against children or other persons and all crimes relating to financial exploitation as defined in RCW 43.43.830 in which the victim was a vulnerable adult.

(3) The business or organization shall pay such reasonable fee for the records check as the state patrol may require under RCW 43.43.838.

(4) The business or organization shall notify the applicant of the state patrol's response within ten days after receipt by the business or organization. The employer shall provide a copy of the response to the applicant and shall notify the applicant of such availability.

(5) The business or organization shall use this record only in making the initial employment or engagement decision. Further dissemination or use of the record is prohibited. A business or organization violating this subsection is subject to a civil action for damages.

(6) An insurance company shall not require a business or organization to request background information on any employee before issuing a policy of insurance.

(7) The business and organization shall be immune from civil liability for failure to request background information on an applicant unless the failure to do so constitutes gross negligence. [1990 c 3 § 1103. Prior: 1989 c 334 § 3; 1989 c 90 § 3; 1987 c 486 § 3.]

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

43.43.838 Background checks—Transcript of conviction record, disciplinary board decision, criminal charges, or civil adjudication—Finding of no evidence, identification document—Immunity—Rules. (1) After January 1, 1988, and notwithstanding any provision

of RCW 43.43.700 through 43.43.810 to the contrary, the state patrol shall furnish a transcript of the conviction record, disciplinary board final decision and any subsequent criminal charges associated with the conduct that is the subject of the disciplinary board final decision, or civil adjudication record pertaining to any person for whom the state patrol or the federal bureau of investigation has a record upon the written request of:

(a) The subject of the inquiry;

(b) Any business or organization for the purpose of conducting evaluations under RCW 43.43.832;

(c) The department of social and health services;

(d) Any law enforcement agency, prosecuting authority, or the office of the attorney general; or

(e) The department of social and health services for the purpose of meeting responsibilities set forth in chapter 74.15, 18.51, 18.20, or 72.23 RCW, or any later-enacted statute which purpose is to regulate or license a facility which handles vulnerable adults. However, access to conviction records pursuant to this subsection (1)(e) does not limit or restrict the ability of the department to obtain additional information regarding conviction records and pending charges as set forth in RCW 74.15.030(2)(b).

After processing the request, if the conviction record, disciplinary board final decision and any subsequent criminal charges associated with the conduct that is the subject of the disciplinary board final decision, or adjudication record shows no evidence of a crime against children or other persons or, in the case of vulnerable adults, no evidence of crimes relating to financial exploitation in which the victim was a vulnerable adult, an identification declaring the showing of no evidence shall be issued to the applicant by the state patrol and shall be issued within fourteen working days of the request. Possession of such identification shall satisfy future background check requirements for the applicant for a two-year period unless the prospective employee is any current school district employee who has applied for a position in another school district.

(2) The state patrol shall by rule establish fees for disseminating records under this section to recipients identified in subsection (1)(a) and (b) of this section. The state patrol shall also by rule establish fees for disseminating records in the custody of the national crime information center. The revenue from the fees shall cover, as nearly as practicable, the direct and indirect costs to the state patrol of disseminating the records: PROVIDED, That no fee shall be charged to a non-profit organization, including school districts and educational service districts, for the records check.

(3) No employee of the state, employee of a business or organization, or the business or organization is liable for defamation, invasion of privacy, negligence, or any other claim in connection with any lawful dissemination of information under RCW 43.43.830 through 43.43.840 or 43.43.760.

(4) Before July 26, 1987, the state patrol shall adopt rules and forms to implement this section and to provide

for security and privacy of information disseminated under this section, giving first priority to the criminal justice requirements of this chapter. The rules may include requirements for users, audits of users, and other procedures to prevent use of civil adjudication record information or criminal history record information inconsistent with this chapter.

(5) Nothing in RCW 43.43.830 through 43.43.840 shall authorize an employer to make an inquiry not specifically authorized by this chapter, or be construed to affect the policy of the state declared in chapter 9.96A RCW. [1990 c 3 § 1104. Prior: 1989 c 334 § 4; 1989 c 90 § 4; 1987 c 486 § 5.]

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

43.43.845 Crimes against children—Notification of conviction or guilty plea of school employee. (1) Upon a guilty plea or conviction of a person of any felony crime involving the physical neglect of a child under chapter 9A.42 RCW, the physical injury or death of a child under chapter 9A.32 or 9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, or the sale or purchase of a minor child under RCW 9A.64.030, the prosecuting attorney shall determine whether the person holds a certificate or permit issued under chapters 28A.405 and 28A.410 RCW or is employed by a school district. If the person is employed by a school district or holds a certificate or permit issued under chapters 28A.405 and 28A.410 RCW, the prosecuting attorney shall notify the state patrol of such guilty pleas or convictions.

(2) When the state patrol receives information that a person who has a certificate or permit issued under chapters 28A.405 and 28A.410 RCW or is employed by a school district has pled guilty to or been convicted of one of the felony crimes under subsection (1) of this section, the state patrol shall immediately transmit that information to the superintendent of public instruction. It shall be the duty of the superintendent of public instruction to provide this information to the state board of education and the school district employing the individual who pled guilty or was convicted of the crimes identified in subsection (1) of this section. [1990 c 33 § 577; 1989 c 320 § 6.]

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

Severability—1989 c 320: See note following RCW 28A.410.090.

Chapter 43.46 ARTS COMMISSION

Sections

43.46.095 State art collection.

43.46.095 State art collection. All works of art purchased and commissioned under the visual arts program

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shall become a part of a state art collection developed, administered, and operated by the Washington state arts commission. All works of art previously purchased or commissioned under RCW 43.46.090, 43.17.200, 43.19.455, 28B.10.025, or 28A.335.210 shall be considered a part of the state art collection to be administered by the Washington state arts commission. [1990 c 33 § 578; 1983 c 204 § 2.]

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

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

Chapter 43.51

PARKS AND RECREATION COMMISSION

Sections

43.51.046 Waste reduction and recycling.
43.51.200 Transfer of surplus land—Reversionary clause required—Release—Parkland acquisition account.
43.51.280 Trust land purchase account.
43.51.290 Winter recreational facilities—Commission duties—Liability.
43.51.300 Winter recreational area parking permits—Fee—Expiration.
43.51.310 Winter recreational program account—Deposit of parking permit fees—Winter recreation programs by public and private agencies.
43.51.340 Winter recreation advisory committee—Generally.
43.51.415 Environmental interpretation—Authority of commission.
43.51.417 Environment interpretation—Scope of activities.
43.51.419 Environmental interpretation—Assistance from other organizations.

43.51.046 Waste reduction and recycling. (1) By July 1, 1992, the state parks and recreation commission shall provide waste reduction and recycling information in each state park campground and day-use area.

(2) By July 1, 1993, the commission shall provide recycling receptacles in the day-use and campground areas of at least fifteen state parks. The receptacles shall be clearly marked for the disposal of at least two of the following recyclable materials: Aluminum, glass, newspaper, plastic, and tin. The commission shall endeavor to provide recycling receptacles in parks that are near urban centers or in heavily used parks.

(3) The commission shall provide daily maintenance of such receptacles from April through September of each year.

(4) Beginning July 1, 1993, the commission shall provide recycling receptacles in at least five additional state parks per biennium until the total number of state parks having recycling receptacles reaches forty.

(5) The commission is authorized to enter into agreements with any person, company, or nonprofit organization to provide for the collection and transport of recyclable materials and related activities under this section. [1991 c 11 § 1.]

Reviser's note: 1991 c 11 directed that this section be added to chapter 70.93 RCW. The placement appears inappropriate and the section has been codified as part of chapter 43.51 RCW.

Marinas and airports: RCW 70.93.095.

43.51.200 Transfer of surplus land—Reversionary clause required—Release—Parkland acquisition account. (1) Any lands owned by the state parks and recreation commission, which are determined to be surplus to the needs of the state for development for state park purposes and which the commission proposes to deed to a local government or other entity, shall be accompanied by a clause requiring that if the land is not used for outdoor recreation purposes, ownership of the land shall revert to the state parks and recreation commission.

(2) The state parks and recreation commission, in cases where land subject to such a reversionary clause is proposed for use or disposal for purposes other than recreation, shall require that, if the land is surplus to the needs of the commission for park purposes at the time the commission becomes aware of its proposed use for nonrecreation purposes, the holder of the land or property shall reimburse the commission for the release of the reversionary interest in the land. The reimbursement shall be in the amount of the fair market value of the reversionary interest as determined by a qualified appraiser agreeable to the commission. Appraisal costs shall be borne by the local entity which holds title to the land.

(3) Any funds generated under a reimbursement under this section shall be deposited in the parkland acquisition account which is hereby created in the state treasury. Moneys in this account are to be used solely for the purchase or acquisition of property for use as state park property by the commission, as directed by the legislature; all such funds shall be subject to legislative appropriation. [1991 1st sp.s. c 13 § 23; 1985 c 57 § 33; 1984 c 87 § 1.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

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

43.51.280 Trust land purchase account. There is hereby created the trust land purchase account in the state treasury. Any revenues accruing to this account shall be used for the purchase of the property described in RCW 43.51.270(3)(a), to include all reasonable costs of acquisition, and a fee interest or such other interest in state trust lands presently used for park purposes as the state parks and recreation commission shall determine and to reimburse the state parks and recreation commission for the cost of collecting such fees beginning with the 1973–75 fiscal biennium. Any funds remaining in the account shall be used for the renovation and redevelopment of state park structures and facilities to extend the original life expectancy or correct damage to the environment of state parks and for the administration, maintenance, and operation of state parks and other state parks programs in the 1991–93 biennium. Thereafter, the funds shall not be used for such purposes until the money in the account satisfies the payment required to be made in the contract for sale of lands in RCW 43.51.270(2), the acquisition of the property described in RCW 43.51.270(3)(a), those amounts necessary to pay for the remaining trust assets of timber

situated on the lands described in RCW 43.51.270(2), and for the acquisition of the property described in RCW 43.51.270(3) (b), (c), (d), and (e) and 43.51.270(4) on a schedule satisfactory to the board of natural resources. Payments may be delayed for property described in RCW 43.51.270(3) (b), (c), (d), and (e) until the existing contract for purchase of lands in RCW 43.51.270(2) has been paid off. Payments for the property in RCW 43.51.270(4) may be delayed until contracts for purchase of lands and timber described in RCW 43.51.270 (2) and (3) have been paid off. Payments from the account for those parcels included in RCW 43.51.270(4) shall be established on a schedule which is mutually acceptable to the board of natural resources and the parks and recreation commission. [1991 1st sp.s. c 16 § 922; 1991 1st sp.s. c 13 § 4; 1987 c 466 § 2. Prior: 1985 c 163 § 2; 1985 c 57 § 34; 1981 c 271 § 2; 1980 c 4 § 2; 1971 ex.s. c 210 § 2.]

Reviser's note: This section was amended by 1991 1st sp.s. c 13 § 4 and by 1991 1st sp.s. c 16 § 922, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—1991 1st sp.s. c 16: See notes following RCW 9.46.100.

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

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

43.51.290 Winter recreational facilities—Commission duties—Liability. In addition to its other powers, duties, and functions the state parks and recreation commission may:

(1) Plan, construct, and maintain suitable facilities for winter recreational activities on lands administered or acquired by the commission or as authorized on lands administered by other public agencies or private landowners by agreement;

(2) Provide and issue upon payment of the proper fee, with the assistance of such authorized agents as may be necessary for the convenience of the public, special permits to park in designated winter recreational area parking spaces;

(3) Administer the snow removal operations for all designated winter recreational area parking spaces; and

(4) Compile, publish, and distribute maps indicating such parking spaces, adjacent trails, and areas and facilities suitable for winter recreational activities.

The commission may contract with any public or private agency for the actual conduct of such duties, but shall remain responsible for the proper administration thereof. The commission is not liable for unintentional injuries to users of lands administered for winter recreation purposes under this section or under RCW 46.10-.210, whether the lands are administered by the commission, by other public agencies, or by private landowners through agreement with the commission. Nothing in this section prevents the liability of the commission for injuries sustained by a user by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted. A road covered with snow and groomed for the purposes of

winter recreation consistent with this chapter and chapter 46.10 RCW shall not be presumed to be a known dangerous artificial latent condition for the purposes of this chapter. [1990 c 136 § 2; 1990 c 49 § 2; 1982 c 11 § 1; 1975 1st ex.s. c 209 § 1.]

Reviser's note: This section was amended by 1990 c 49 § 2 and by 1990 c 136 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1975 1st ex.s. c 209: "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 1st ex.s. c 209 § 9.]

43.51.300 Winter recreational area parking permits—Fee—Expiration. The fee for the issuance of special winter recreational area parking permits shall be determined by the commission after consultation with the winter recreation advisory committee. If the person making application therefor is also the owner of a snowmobile registered pursuant to chapter 46.10 RCW, there shall be no fee for the issuance of an annual permit. All special winter recreational area parking permits shall commence and expire on the dates established by the commission. [1990 c 49 § 3; 1986 c 47 § 1; 1982 c 11 § 2; 1975 1st ex.s. c 209 § 2.]

Severability—1975 1st ex.s. c 209: See note following RCW 43.51.290.

43.51.310 Winter recreational program account—Deposit of parking permit fees—Winter recreation programs by public and private agencies. There is hereby created the winter recreational program account in the state treasury. Special winter recreational area parking permit fees collected under this chapter shall be remitted to the state treasurer to be deposited in the winter recreational program account and shall be appropriated only to the commission for nonsnowmobile winter recreation purposes including the administration, acquisition, development, operation, planning, and maintenance of winter recreation facilities and the development and implementation of winter recreation, safety, enforcement, and education programs. The commission may accept gifts, grants, donations, or moneys from any source for deposit in the winter recreational program account.

Any public agency in this state may develop and implement winter recreation programs. The commission may make grants to public agencies and contract with any public or private agency or person to develop and implement winter recreation programs. [1991 1st sp.s. c 13 § 6; 1985 c 57 § 35; 1982 c 11 § 3; 1975 1st ex.s. c 209 § 3.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

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

Severability—1975 1st ex.s. c 209: See note following RCW 43.51.290.

43.51.340 Winter recreation advisory committee—Generally. (1) There is created a winter recreation advisory committee to advise the parks and recreation commission in the administration of this chapter and to

assist and advise the commission in the development of winter recreation facilities and programs.

(2) The committee shall consist of:

(a) Six representatives of the nonsnowmobiling winter recreation public appointed by the commission, including a resident of each of the six geographical areas of this state where nonsnowmobiling winter recreation activity occurs, as defined by the commission.

(b) Three representatives of the snowmobiling public appointed by the commission.

(c) One representative of the department of natural resources, one representative of the department of wildlife, and one representative of the Washington state association of counties, each of whom shall be appointed by the director of the particular department or association.

(3) The terms of the members appointed under subsection (2) (a) and (b) of this section shall begin on October 1st of the year of appointment and shall be for three years or until a successor is appointed, except in the case of appointments to fill vacancies for the remainder of the unexpired term: PROVIDED, That the first of these members shall be appointed for terms as follows: Three members shall be appointed for one year, three members shall be appointed for two years, and three members shall be appointed for three years.

(4) Members of the committee shall be reimbursed from the winter recreational program account created by RCW 43.51.310 for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The committee shall meet at times and places it determines not less than twice each year and additionally as required by the committee chairman or by majority vote of the committee. The chairman of the committee shall be chosen under procedures adopted by the committee. The committee shall adopt any other procedures necessary to govern its proceedings.

(6) The director of parks and recreation or the director's designee shall serve as secretary to the committee and shall be a nonvoting member.

(7) The winter recreation advisory committee and its powers and duties shall terminate on June 30, 2001. [1990 c 49 § 1; 1989 c 175 § 107; 1988 c 36 § 16; 1987 c 330 § 1101; 1986 c 47 § 2; 1982 c 11 § 6; 1975 1st ex.s. c 209 § 8.]

Effective date—1989 c 175: See note following RCW 34.05.010.

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

Severability—1975 1st ex.s. c 209: See note following RCW 43.51.290.

43.51.415 Environmental interpretation—Authority of commission. The legislature finds that the lands owned and managed by the state parks and recreation commission are a significant collection of valuable natural, historical, and cultural resources for the citizens of Washington state. The legislature further finds that if citizens understand and appreciate the state park ecological resources, they will come to appreciate and understand the ecosystems and natural resources

throughout the state. Therefore, the state parks and recreation commission may increase the use of its facilities and resources to provide environmental interpretation throughout the state parks system. [1991 c 107 § 1.]

43.51.417 Environment interpretation—Scope of activities. The state parks and recreation commission may provide environmental interpretative activities for visitors to state parks that:

(1) Explain the functions, history, and cultural aspects of ecosystems;

(2) Explain the relationship between human needs, human behaviors and attitudes, and the environment; and

(3) Offer experiences and information to increase citizen appreciation and stewardship of the environment and its multiple uses. [1991 c 107 § 2.]

43.51.419 Environmental interpretation—Assistance from other organizations. The state parks and recreation commission may consult and enter into agreements with and solicit assistance from private sector organizations and other governmental agencies that are interested in conserving and interpreting Washington's environment. The commission shall not permit commercial advertising in state park lands or interpretive centers as a condition of such agreements. Logos or credit lines for sponsoring organizations may be permitted. The commission shall maintain an accounting of all monetary gifts provided, and expenditures of monetary gifts shall not be used to increase personnel. [1991 c 107 § 3.]

Chapter 43.59

TRAFFIC SAFETY COMMISSION

Sections

- 43.59.030 Members of commission—Appointment—Vacancies—Governor's designee to act during governor's absence.
- 43.59.140 Driving while under the influence of intoxicating liquor or any drug—Information and education.

43.59.030 Members of commission—Appointment—Vacancies—Governor's designee to act during governor's absence. The governor shall be assisted in his duties and responsibilities by the Washington state traffic safety commission. The Washington traffic safety commission shall be composed of the governor as chairman, the superintendent of public instruction, the director of licensing, the secretary of transportation, the chief of the state patrol, the secretary of health, the secretary of social and health services, a representative of the association of Washington cities to be appointed by the governor, a member of the association of counties to be appointed by the governor, and a representative of the judiciary to be appointed by the governor. Appointments to any vacancies among appointee members shall be as in the case of original appointment.

The governor may designate an employee of the governor's office to act on behalf of the governor during the

absence of the governor at one or more of the meetings of the commission. The vote of the designee shall have the same effect as if cast by the governor if the designation is in writing and is presented to the person presiding at the meetings included within the designation.

The governor may designate a member to preside during the governor's absence. [1991 c 3 § 298; 1982 c 30 § 1; 1979 c 158 § 105; 1971 ex.s. c 85 § 7; 1969 ex.s. c 105 § 1; 1967 ex.s. c 147 § 3.]

43.59.140 Driving while under the influence of intoxicating liquor or any drug—Information and education. The Washington traffic safety commission shall produce and disseminate through all possible media, informational and educational materials explaining the extent of the problems caused by drinking drivers, the need for public involvement in their solution, and the penalties of existing and new laws against driving while under the influence of intoxicating liquor or any drug. [1991 c 290 § 4; 1983 c 165 § 42.]

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

Chapter 43.60A

DEPARTMENT OF VETERANS AFFAIRS

Sections

- 43.60A.100 Counseling services—War-affected veterans.
- 43.60A.110 Counseling—Coordination of programs.
- 43.60A.120 Counseling—Priority.
- 43.60A.130 Counseling—Posttraumatic stress disorder and combat stress program.

43.60A.100 Counseling services—War-affected veterans. The department of veterans affairs, to the extent funds are made available, shall: (1) Contract with professional counseling specialists to provide a range of direct treatment services to war-affected state veterans and to those national guard and reservists who served in the Middle East, and their family members; (2) provide additional treatment services to Washington state Vietnam veterans for post traumatic stress disorder, particularly for those veterans whose post traumatic stress disorder has intensified or initially emerged due to the war in the Middle East; (3) provide an educational program designed to train primary care professionals, such as mental health professionals, about the effects of war-related stress and trauma; (4) provide informational and counseling services for the purpose of establishing and fostering peer-support networks throughout the state for families of deployed members of the reserves and the Washington national guard; (5) provide for veterans' families, a referral network of community mental health providers who are skilled in treating deployment stress, combat stress, and post traumatic stress. [1991 c 55 § 1.]

43.60A.110 Counseling—Coordination of programs. The department shall coordinate the programs contained in RCW 43.60A.100 with the services offered by the department of social and health services, local

mental health organizations, and the federal department of veterans affairs to minimize duplication. [1991 c 55 § 2.]

43.60A.120 Counseling—Priority. The department of veterans affairs shall give priority in its counseling and instructional programs to treating state veterans located in rural areas of the state, especially those who are members of traditionally underserved minority groups, and women veterans. [1991 c 55 § 3.]

43.60A.130 Counseling—Posttraumatic stress disorder and combat stress program. The department of veterans affairs shall design its posttraumatic stress disorder and combat stress programs and related activities to provide veterans with as much privacy and confidentiality as possible and yet consistent with sound program management. [1991 c 55 § 4.]

Chapter 43.62

DETERMINATION OF POPULATIONS— STUDENT ENROLLMENTS

Sections

- 43.62.010 Office of financial management—Population studies—Expenditures.
43.62.035 Determining population—Projections.

43.62.010 Office of financial management—Population studies—Expenditures. If the state or any of its political subdivisions, or other agencies, use the population studies services of the office of financial management or the successor thereto, the state, its political subdivision, or other agencies utilizing such services shall pay for the cost of rendering such services. Expenditures shall be paid out of funds allocated to cities and towns under RCW 82.44.155 and shall be paid from said fund before any allocations or payments are made to cities and towns under RCW 82.44.155. [1990 c 42 § 317; 1979 c 151 § 127; 1975-'76 2nd ex.s. c 34 § 121; 1965 c 8 § 43.62.010. Prior: 1957 c 175 § 1; 1951 c 96 § 1; 1947 c 51 § 2; RRS § 5508-11.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

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

43.62.035 Determining population—Projections. The office of financial management shall determine the population of each county of the state annually as of April 1st of each year and on or before July 1st of each year shall file a certificate with the secretary of state showing its determination of the population for each county. The office of financial management also shall determine the percentage increase in population for each county over the preceding ten-year period, as of April 1st, and shall file a certificate with the secretary of state by July 1st showing its determination. At least once every ten years the office of financial management shall

prepare twenty-year growth management planning population projections required by RCW 36.70A.110 for each county that adopts a comprehensive plan under RCW 36.70A.040 and shall review these projections with such counties before final adoption. [1991 1st sp.s. c 32 § 30; 1990 1st ex.s. c 17 § 32.]

Section headings not law—1991 1st sp.s. c 32: See RCW 36.70A.902.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Chapter 43.63A

DEPARTMENT OF COMMUNITY DEVELOPMENT

Sections

- 43.63A.065 Functions and responsibilities of department.
43.63A.066 Child abuse and neglect prevention training for participants in head start or early childhood education assistance programs—Department's duties.
43.63A.115 Community action agency network—Delivery system for federal and state anti-poverty programs.
43.63A.375 Fire services trust fund.
43.63A.377 Fire services trust fund—Expenditures.
43.63A.380 Fire service training center bond retirement account of 1977.
43.63A.450 Community diversification program.
43.63A.460 Manufactured housing—Department duties.
43.63A.500 Farmworker housing construction manuals and plans.
43.63A.510 Farmworker housing—Inventory of state-owned land.
43.63A.550 Growth management—Inventorying and collecting data.
43.63A.560 Rural economic development—Grant program—Advisory committee.
43.63A.600 Emergency mortgage and rental assistance program for dislocated forest products workers—Goals.
43.63A.610 Emergency mortgage assistance—Guidelines.
43.63A.620 Emergency rental assistance—Guidelines.
43.63A.630 Emergency mortgage and rental assistance program—Eligibility.
43.63A.640 Emergency mortgage and rental assistance program—Duties.

43.63A.065 Functions and responsibilities of department. The department shall have the following functions and responsibilities:

(1) Cooperate with and provide technical and financial assistance to the local governments and to the local agencies serving the communities of the state for the purpose of aiding and encouraging orderly, productive, and coordinated development of the state, and, unless stipulated otherwise, give priority to local communities with the greatest relative need and the fewest resources.

(2) Administer state and federal grants and programs which are assigned to the department by the governor or the legislature.

(3) Administer community services programs through private, nonprofit organizations and units of general purpose local government; these programs are directed to the poor and infirm and include community-based efforts to foster self-sufficiency and self-reliance, energy assistance programs, head start, and weatherization.

(4) Study issues affecting the structure, operation, and financing of local government as well as those state activities which involve relations with local government and report the results and recommendations to the

governor, legislature, local government, and citizens of the state.

(5) Assist the governor in coordinating the activities of state agencies which have an impact on local governments and communities.

(6) Provide technical assistance to the governor and the legislature on community development policies for the state.

(7) Assist in the production, development, rehabilitation, and operation of owner-occupied or rental housing for low and moderate income persons, and qualify as a participating state agency for all programs of the Department of Housing and Urban Development or its successor.

(8) Support and coordinate local efforts to promote volunteer activities throughout the state.

(9) Participate with other states or subdivisions thereof in interstate programs and assist cities, counties, municipal corporations, governmental conferences or councils, and regional planning commissions to participate with other states or their subdivisions.

(10) Hold public hearings and meetings to carry out the purposes of this chapter.

(11) Provide a comprehensive state-level focus for state fire protection services, funding, and policy.

(12) Administer a program to identify, evaluate, and protect properties which reflect outstanding elements of the state's cultural heritage.

(13) Coordinate a comprehensive state program for mitigating, preparing for, responding to, and recovering from emergencies and disasters. [1990 1st ex.s. c 17 § 70; 1986 c 266 § 137; 1984 c 125 § 5.]

Intent—1990 1st ex.s. c 17: See note following RCW 43.210.010.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Severability—1986 c 266: See note following RCW 38.52.005.

Duties of department relating to
archaeology and historic preservation: Chapter 27.34 RCW.
emergency management: Chapter 38.52 RCW.
fire protection: Chapter 48.48 RCW.

43.63A.066 Child abuse and neglect prevention training for participants in head start or early childhood education assistance programs—Department's duties. The department of community development shall have primary responsibility for providing child abuse and neglect prevention training to preschool age children participating in the federal head start program or the early childhood education and assistance program established under RCW 28A.215.010 through 28A.215.200 and 28A.215.900 through 28A.215.908. [1990 c 33 § 579; 1987 c 489 § 4.]

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

Intent—1987 c 489: See note following RCW 28A.300.150.

43.63A.115 Community action agency network—Delivery system for federal and state anti-poverty programs. (1) The community action agency network, established initially under the federal economic opportunity act of 1964 and subsequently under the federal community services block grant program of 1981, as

amended, shall be a delivery system for federal and state anti-poverty programs in this state, including but not limited to the community services block grant program, the low-income energy assistance program, and the federal department of energy weatherization program.

(2) Local community action agencies comprise the community action agency network. The community action agency network shall serve low-income persons in the counties. Each community action agency and its service area shall be designated in the state federal community service block grant plan as prepared by the department of community development.

(3) Funds for anti-poverty programs may be distributed to the community action agencies by the department of community development and other state agencies in consultation with the authorized representatives of community action agency networks. [1990 c 156 § 1.]

43.63A.375 Fire services trust fund. The fire services trust fund is created in the state treasury. All receipts designated by the legislature shall be deposited in the fund. Appropriations from the fund may be made exclusively for the purposes specified in RCW 43.63A.377. [1991 c 135 § 2.]

Intent—1991 c 135: "It is necessary for the health, safety, and welfare of the people of the state of Washington that fire code enforcement, public education on fire prevention, fire training for fire and emergency response personnel, and administration of these activities be funded in a dependable manner. It is therefore the intent of the legislature to establish a fund for these purposes." [1991 c 135 § 1.]

Effective date—1991 c 135: "This act is necessary for the preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 135 § 8.]

Severability—1991 c 135: "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." [1991 c 135 § 9.]

43.63A.377 Fire services trust fund—Expenditures. Money from the fire services trust fund may be expended for the following purposes:

(1) Training of fire service personnel, including both classroom and hands-on training at the state fire training center or other locations approved by the director through the director of fire protection services;

(2) Maintenance and operation at the state's fire training center near North Bend. If in the future the state builds other fire training centers a portion of these moneys may be used for the maintenance and operation at these centers;

(3) Lease or purchase of equipment for use in the provisions of training to fire service personnel;

(4) Grants to local entities to allow them to perform their functions under this section;

(5) Costs of administering these programs under this section;

(6) Licensing and enforcement of state laws governing the sales of fireworks; and

(7) Development with the legal fireworks industry and funding of a state-wide public education program for fireworks safety. [1991 c 135 § 3.]

Intent—Effective date—Severability—1991 c 135: See notes following RCW 43.63A.375.

43.63A.380 Fire service training center bond retirement account of 1977. The state fire service training center bond retirement account of 1977 is hereby reestablished as an account within the treasury for the purpose of the payment of the principal of and interest on the bonds authorized to be issued pursuant to chapter 349, Laws of 1977 ex. sess., or chapter 470, Laws of 1985 or, if the legislature so determines, for any bonds and notes hereafter authorized and issued for the commission for vocational education or the statutory successor to its powers and duties involving the state fire training center.

The state finance committee, on or before June 30th of each year, shall certify to the state treasurer the amount required in the next succeeding twelve months for the payment of the principal of and the interest coming due on such bonds. The state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the state general obligation bond retirement fund such amounts and at such times as are required by the bond proceedings. [1991 1st sp.s. c 13 § 79.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

43.63A.450 Community diversification program. The community diversification program is created in the department of community development. The program shall include:

(1) The monitoring and forecasting of shifts in the economic prospects of major defense employers in the state. This shall include but not be limited to the monitoring of defense contract expenditures, other federal contracts, defense employment shifts, the aircraft and aerospace industry, computer products, and electronics;

(2) The identification of cities, counties, or regions within the state that are primarily dependent on defense or other federal contracting and the identification of firms dependent on federal defense contracts;

(3) Assistance to communities in broadening the local economic base through the provision of management assistance, assistance in financing, entrepreneurial training, and assistance to businesses in using off-the-shelf technology to start new production processes or introduce new products;

(4) Formulating a state plan for diversification in defense dependent communities in collaboration with the employment security department, the department of trade and economic development, and the office of financial management. The plan shall use the information made available through carrying out subsections (1) and (2) of this section; and

(5) The identification of diversification efforts conducted by other states, the federal government, and other nations, and the provision of information on these efforts, as well as information gained through carrying out subsections (1) and (2) of this section, to firms,

communities, and workforces that are defense dependent.

The department shall, beginning January 1, 1992, report annually to the governor and the legislature on the activities of the community diversification program. [1990 c 278 § 2.]

Reviser's note—Sunset Act application: The community diversification program is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.367. RCW 43.63A.450 is scheduled for future repeal under RCW 43.131.368.

Legislative finding—1990 c 278: "The legislature finds that the industrial and manufacturing base of the Washington economy has undergone tremendous change during the past two decades. The challenge facing Washington firms is to become as productive and efficient as possible to survive in an increasingly competitive world market. Many of the state's communities are dependent on one or two industries. Many firms are heavily reliant on the defense expenditures of the federal government. It is the intent of the legislature to assist communities in planning for economic change, developing a broader economic base, and preparing for any shift in federal priorities that could cause a reduction in federal expenditures, and assist firms by providing information and technical assistance necessary for them to introduce new products or production processes." [1990 c 278 § 1.]

Severability—1990 c 278: "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." [1990 c 278 § 6.]

43.63A.460 Manufactured housing—Department duties. Beginning on July 1, 1991, the department of community development shall be responsible for performing all the consumer complaint and related functions of the state administrative agency that are required for purposes of complying with the regulations established by the federal department of housing and urban development for manufactured housing, including the preparation and submission of the state administrative plan.

The department of community development may enter into state or local interagency agreements to coordinate site inspection activities with record monitoring and complaint handling. The interagency agreement may also provide for the reimbursement for cost of work that an agency performs. The department may include other related areas in any interagency agreements which are necessary for the efficient provision of services.

The department of labor and industries shall transfer all records, files, books, and documents necessary for the department of community development to assume these new functions.

The directors of the department of community development and the department of labor and industries shall immediately take such steps as are necessary to ensure that *this act is implemented on June 7, 1990. [1990 c 176 § 2.]

***Reviser's note:** For codification of "this act" [1990 c 176], see note following RCW 43.22.495.

Transfer of duties from the department of labor and industries: RCW 43.22.495.

43.63A.500 Farmworker housing construction manuals and plans. The department shall develop, and make available to the public, model or prototype construction plans and manuals for several types of farmworker

housing, including but not limited to seasonal housing for individuals and families, campgrounds, and recreational vehicle parks. Any person or organization intending to construct farmworker housing may adopt one or more of these models as the plan for the proposed housing. [1990 c 253 § 5.]

Legislative finding and purpose—1990 c 253: See note following RCW 43.70.330.

43.63A.510 Farmworker housing—Inventory of state-owned land. The department shall work with the departments of natural resources, transportation, and general administration to identify and catalog underutilized, state-owned land and property for possible lease. The department shall provide an inventory of real property that is owned or administered by each agency and is available for lease. The inventories shall be provided to the department by November 1, 1990, with inventory revisions provided each November 1 thereafter. The department shall assist local governments, public housing authorities, public nonprofit organizations, and private nonprofit organizations in obtaining long-term leases of suitable and available sites. The leases shall be for the purpose of providing sites to be used for affordable housing for farmworkers. [1990 c 253 § 6.]

Legislative finding and purpose—1990 c 253: See note following RCW 43.70.330.

43.63A.550 Growth management—Inventorying and collecting data. (1) The department shall assist in the process of inventorying and collecting data on public and private land for the acquisition of data describing land uses, demographics, infrastructure, critical areas, transportation corridors physical features, housing, and other information useful in managing growth throughout the state. For this purpose the department shall contract with the department of information services and shall form an advisory group consisting of representatives from state, local, and federal agencies, colleges and universities, and private firms with expertise in land planning, and geographic information systems.

(2) The department shall establish a sequence for acquiring data, giving priority to rapidly growing areas. The data shall be retained in a manner to facilitate its use in preparing maps, aggregating with data from multiple jurisdictions, and comparing changes over time. Data shall further be retained in a manner which permits its access via computer.

(3) By December 1, 1990, the department shall report to the appropriate committees of the house of representatives and senate on the availability of existing data; specific data which is needed but not currently available; data compatibility across jurisdictions; the suitability of various types of data for retention on computer; the cost of collecting, storing, updating, mapping, and manipulating data on a computer; and recommendations on how to maintain an inventory of data which is accessible to any user and whether to maintain the data at a central repository or decentralized repositories.

(4) The department shall work with other state agencies, local governments, and private organizations that

are inventorying public and private lands to ensure close coordination and to ensure that duplication of efforts does not occur. [1990 1st ex.s. c 17 § 21.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

43.63A.560 Rural economic development—Grant program—Advisory committee. (1) The department shall administer a grant program which makes grants to local nonprofit organizations for rural economic development or for sharing economic growth outside the Puget Sound region. The grants shall be used to: (a) Develop urban-rural links; (b) build local capacity for economic growth; or (c) improve the export of products or services from rural areas to locations outside the United States.

(2) The department shall consult with, and if necessary form an advisory committee including, a diverse group of private sector representatives including, but not limited to, major corporations, commercial financial institutions, venture capitalists, small businesses, natural resource businesses, and developers to determine what opportunities for new investment and business growth might be available for areas outside high-growth counties. The department shall also consult with the department of trade and economic development. The department shall seek to maximize and link new investment opportunities to grant projects under this section.

(3) The department may enact rules to carry out this section. [1990 1st ex.s. c 17 § 67.]

Intent—1990 1st ex.s. c 17: See note following RCW 43.210.010.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

43.63A.600 Emergency mortgage and rental assistance program for dislocated forest products workers—Goals. (1) The department of community development, as a member of the agency timber task force and in consultation with the economic recovery coordination board, shall establish and administer the emergency mortgage and rental assistance program. The department shall identify the communities most adversely affected by reductions in timber harvest levels and shall prioritize assistance under this program to these communities. The department shall work with the department of social and health services and the timber recovery coordinator to develop the program in timber impact areas. Organizations eligible to receive funds for distribution under the program are those organizations that are eligible to receive assistance through the Washington housing trust fund.

(2) The goals of the program are to:

(a) Provide temporary emergency mortgage or rental assistance loans on behalf of dislocated forest products workers in timber impact areas who are unable to make current mortgage or rental payments on their permanent residences and are subject to immediate eviction for nonpayment of mortgage installments or nonpayment of rent;

(b) Prevent the dislocation of individuals and families from their permanent residences and their communities; and

(c) Maintain economic and social stability in timber impact areas. [1991 c 315 § 23.]

Intent—1991 c 315: See note following RCW 50.12.270.

Severability—**Conflict with federal requirements**—**Effective date**—1991 c 315: See RCW 50.70.900 through 50.70.902.

43.63A.610 Emergency mortgage assistance—

Guidelines. Emergency mortgage assistance shall be provided under the following general guidelines:

(1) Loans provided under the program shall not exceed an amount equal to twenty-four months of mortgage payments.

(2) The maximum loan amount allowed under the program shall not exceed twenty thousand dollars.

(3) Loans shall be made to applicants who meet specific income guidelines established by the department.

(4) Loan payments shall be made directly to the mortgage lender.

(5) Loans shall be granted on a first-come, first-served basis.

(6) Repayment of loans provided under the program must not take more than twenty years.

(7) The department may provide for emergency short-term loans. [1991 c 315 § 24.]

Intent—1991 c 315: See note following RCW 50.12.270.

Severability—**Conflict with federal requirements**—**Effective date**—1991 c 315: See RCW 50.70.900 through 50.70.902.

43.63A.620 Emergency rental assistance—

Guidelines. Emergency rental assistance shall be provided under the following general guidelines:

(1) Rental assistance provided under the program may be in the form of loans or grants and shall not exceed an amount equal to twenty-four months of mortgage payments.

(2) Rental assistance shall be made to applicants who meet specific income guidelines established by the department.

(3) Rental payments shall be made directly to the landlord.

(4) Rental assistance shall be granted on a first-come, first-served basis. [1991 c 315 § 25.]

Intent—1991 c 315: See note following RCW 50.12.270.

Severability—**Conflict with federal requirements**—**Effective date**—1991 c 315: See RCW 50.70.900 through 50.70.902.

43.63A.630 Emergency mortgage and rental assistance program—Eligibility. To be eligible for assistance under the program, an applicant must:

(1) Be unable to keep mortgage or rental payments current, due to a loss of employment, and shall be at significant risk of eviction;

(2) Have his or her permanent residence located in an eligible community;

(3) If requesting emergency mortgage assistance, be the owner of an equitable interest in the permanent residence and intend to reside in the home being financed;

(4) Be actively seeking new employment or be enrolled in a training program approved by the director; and

(5) Submit an application for assistance to an organization eligible to receive funds under RCW 43.63A.600 by June 30, 1996. [1991 c 315 § 26.]

Intent—1991 c 315: See note following RCW 50.12.270.

Severability—**Conflict with federal requirements**—**Effective date**—1991 c 315: See RCW 50.70.900 through 50.70.902.

43.63A.640 Emergency mortgage and rental assistance program—Duties. The department shall carry out the following duties:

(1) Administer the program;

(2) Identify organizations eligible to receive funds to implement the program;

(3) Develop and adopt the necessary rules and procedures for implementation of the program and for dispersal of program funds to eligible organizations;

(4) Establish the interest rate for repayment of loans at two percent below the market rate;

(5) Work with lending institutions and social service providers in the eligible communities to assure that all eligible persons are informed about the program;

(6) Utilize federal and state programs that complement or facilitate carrying out the program;

(7) Submit a report to the senate commerce and labor committee and the house of representatives housing committee by January 31, 1992. [1991 c 315 § 27.]

Intent—1991 c 315: See note following RCW 50.12.270.

Severability—**Conflict with federal requirements**—**Effective date**—1991 c 315: See RCW 50.70.900 through 50.70.902.

Chapter 43.70

DEPARTMENT OF HEALTH

Sections

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43.70.440	Head injury prevention act—Short title.
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43.70.095 Civil fines. This section governs the assessment of a civil fine against a person by the department. This section does not govern actions taken under chapter 18.130 RCW.

(1) The department shall give written notice to the person against whom it assesses a civil fine. The notice shall state the reasons for the adverse action. The notice shall be personally served in the manner of service of a summons in a civil action or shall be given in an other [another] manner that shows proof of receipt.

(2) Except as otherwise provided in subsection (4) of this section, the civil fine is due and payable twenty-eight days after receipt. The department may make the date the fine is due later than twenty-eight days after receipt. When the department does so, it shall state the effective date in the written notice given the person against whom it assesses the fine.

(3) The person against whom the department assesses a civil fine has the right to an adjudicative proceeding. The proceeding is governed by the Administrative Procedure Act, chapter 34.05 RCW. The application must be in writing, state the basis for contesting the fine, include a copy of the adverse notice, be served on and received by the department within twenty-eight days of the person's receiving the notice of civil fine, and be served in a manner which shows proof of receipt.

(4) If the person files a timely and sufficient appeal, the department shall not implement the action until the final order has been served. The presiding or reviewing officer may permit the department to implement part or all of the action while the proceedings are pending if the appellant causes an unreasonable delay in the proceedings or for other good cause. [1991 c 3 § 378.]

43.70.115 Licenses—Denial, suspension, revocation, modification. This section governs the denial of an application for a license or the suspension, revocation, or modification of a license by the department. This section does not govern actions taken under chapter 18.130 RCW.

(1) The department shall give written notice of the denial of an application for a license to the applicant or his or her agent. The department shall give written notice of revocation, suspension, or modification of a license to the licensee or his or her agent. The notice shall state the reasons for the action. The notice shall be personally served in the manner of service of a summons in a civil action or shall be given in an other [another] manner that shows proof of receipt.

(2) Except as otherwise provided in this subsection and in subsection (4) of this section, revocation, suspension, or modification is effective twenty-eight days after the licensee or the agent receives the notice.

(a) The department may make the date the action is effective later than twenty-eight days after receipt. If the department does so, it shall state the effective date in the written notice given the licensee or agent.

(b) The department may make the date the action is effective sooner than twenty-eight days after receipt when necessary to protect the public health, safety, or welfare. When the department does so, it shall state the

effective date and the reasons supporting the effective date in the written notice given to the licensee or agent.

(3) A license applicant or licensee who is aggrieved by a department denial, revocation, suspension, or modification has the right to an adjudicative proceeding. The proceeding is governed by the Administrative Procedure Act, chapter 34.05 RCW. The application must be in writing, state the basis for contesting the adverse action, include a copy of the adverse notice, be served on and received by the department within twenty-eight days of the license applicant's or licensee's receiving the adverse notice, and be served in a manner that shows proof of receipt.

(4)(a) If the department gives a licensee twenty-eight or more days notice of revocation, suspension, or modification and the licensee files an appeal before its effective date, the department shall not implement the adverse action until the final order has been entered. The presiding or reviewing officer may permit the department to implement part or all of the adverse action while the proceedings are pending if the appellant causes an unreasonable delay in the proceeding, if the circumstances change so that implementation is in the public interest, or for other good cause.

(b) If the department gives a licensee less than twenty-eight days notice of revocation, suspension, or modification and the licensee timely files a sufficient appeal, the department may implement the adverse action on the effective date stated in the notice. The presiding or reviewing officer may order the department to stay implementation of part or all of the adverse action while the proceedings are pending if staying implementation is in the public interest or for other good cause. [1991 c 3 § 377.]

43.70.130 Powers and duties of secretary—General. The secretary of health shall:

(1) Exercise all the powers and perform all the duties prescribed by law with respect to public health and vital statistics;

(2) Investigate and study factors relating to the preservation, promotion, and improvement of the health of the people, the causes of morbidity and mortality, and the effects of the environment and other conditions upon the public health, and report the findings to the state board of health for such action as the board determines is necessary;

(3) Strictly enforce all laws for the protection of the public health and the improvement of sanitary conditions in the state, and all rules, regulations, and orders of the state board of health;

(4) Enforce the public health laws of the state and the rules and regulations promulgated by the department or the board of health in local matters, when in its opinion an emergency exists and the local board of health has failed to act with sufficient promptness or efficiency, or is unable for reasons beyond its control to act, or when no local board has been established, and all expenses so incurred shall be paid upon demand of the secretary of the department of health by the local health department

for which such services are rendered, out of moneys accruing to the credit of the municipality or the local health department in the current expense fund of the county;

(5) Investigate outbreaks and epidemics of disease that may occur and advise local health officers as to measures to be taken to prevent and control the same;

(6) Exercise general supervision over the work of all local health departments and establish uniform reporting systems by local health officers to the state department of health;

(7) Have the same authority as local health officers, except that the secretary shall not exercise such authority unless the local health officer fails or is unable to do so, or when in an emergency the safety of the public health demands it, or by agreement with the local health officer or local board of health;

(8) Cause to be made from time to time, personal health and sanitation inspections at state owned or contracted institutions and facilities to determine compliance with sanitary and health care standards as adopted by the department, and require the governing authorities thereof to take such action as will conserve the health of all persons connected therewith, and report the findings to the governor;

(9) Review and approve plans for public water system design, engineering, operation, maintenance, financing, and emergency response, as required under state board of health rules;

(10) Take such measures as the secretary deems necessary in order to promote the public health, to establish or participate in the establishment of health educational or training activities, and to provide funds for and to authorize the attendance and participation in such activities of employees of the state or local health departments and other individuals engaged in programs related to or part of the public health programs of the local health departments or the state department of health. The secretary is also authorized to accept any funds from the federal government or any public or private agency made available for health education training purposes and to conform with such requirements as are necessary in order to receive such funds; and

(11) Establish and maintain laboratory facilities and services as are necessary to carry out the responsibilities of the department. [1990 c 132 § 2; 1989 1st ex.s. c 9 § 251; 1985 c 213 § 2; 1979 c 141 § 46; 1967 ex.s. c 102 § 1; 1965 c 8 § 43.20.010. Prior: (i) 1909 c 208 § 2; RRS § 6004. (ii) 1921 c 7 § 59; RRS § 10817. Formerly RCW 43.20A.600 and 43.20.010.]

Legislative findings—Severability—1990 c 132: See note following RCW 43.20.240.

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

Severability—1967 ex.s. c 102: "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 102 § 13.]

Public water systems—Complaint process: RCW 43.20.240.

43.70.190 Violations—Injunctions and legal proceedings authorized. The secretary of health or local

health officer may bring an action to enjoin a violation or the threatened violation of any of the provisions of the public health laws of this state or any rules or regulation made by the state board of health or the department of health pursuant to said laws, 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. Upon the filing of any action, the court may, upon a showing of an immediate and serious danger to residents constituting an emergency, issue a temporary injunctive order ex parte. [1990 c 133 § 3; 1989 1st ex.s. c 9 § 258; 1979 c 141 § 55; 1967 ex.s. c 102 § 5. Formerly RCW 43.20A.650 and 43.20.170.]

Findings—Severability—1990 c 133: See notes following RCW 36.94.140.

Severability—1967 ex.s. c 102: See note following RCW 43.70.130.

43.70.195 Public water systems—Receivership actions brought by secretary. (1) In any action brought by the secretary of health or by a local health officer pursuant to chapter 7.60 RCW to place a public water system in receivership, the petition shall include the names of one or more suitable candidates for receiver who have consented to assume operation of the water system. The department shall maintain a list of interested and qualified individuals, municipal entities, special purpose districts, and investor-owned water companies with experience in the provision of water service and a history of satisfactory operation of a water system. If there is no other person willing and able to be named as receiver, the court shall appoint the county in which the water system is located as receiver. The county may designate a county agency to operate the system, or it may contract with another individual or public water system to provide management for the system. If the county is appointed as receiver, the secretary of health and the county health officer shall provide regulatory oversight for the agency or other person responsible for managing the water system.

(2) In any petition for receivership under subsection (1) of this section, the department shall recommend that the court grant to the receiver full authority to act in the best interests of the customers served by the public water system. The receiver shall assess the capability, in conjunction with the department and local government, for the system to operate in compliance with health and safety standards, and shall report to the court its recommendations for the system's future operation, including the formation of a water district or other public entity, or ownership by another existing water system capable of providing service.

(3) If a petition for receivership and verifying affidavit executed by an appropriate departmental official allege an immediate and serious danger to residents constituting an emergency, the court shall set the matter for hearing within three days and may appoint a temporary receiver ex parte upon the strength of such petition and affidavit pending a full evidentiary hearing,

which shall be held within fourteen days after receipt of the petition.

(4) A bond, if any is imposed upon a receiver, shall be minimal and shall reasonably relate to the level of operating revenue generated by the system. Any receiver appointed pursuant to this section shall not be held personally liable for any good faith, reasonable effort to assume possession of, and to operate, the system in compliance with the court's orders.

(5) The court shall authorize the receiver to impose reasonable assessments on a water system's customers to recover expenditures for improvements necessary for the public health and safety. [1990 c 133 § 4.]

Findings—Severability—1990 c 133: See notes following RCW 36.94.140.

43.70.200 Enforcement of health laws and state or local rules and regulations upon request of local health officer. Upon the request of a local health officer, the secretary of health is hereby authorized and empowered to take legal action to enforce the public health laws and rules and regulations of the state board of health or local rules and regulations within the jurisdiction served by the local health department, and may institute any civil legal proceeding authorized by the laws of the state of Washington, including a proceeding under Title 7 RCW. [1990 c 133 § 5; 1989 1st ex.s. c 9 § 259; 1979 c 141 § 56; 1967 ex.s. c 102 § 6. Formerly RCW 43.20A.655 and 43.20.180.]

Findings—Severability—1990 c 133: See notes following RCW 36.94.140.

Severability—1967 ex.s. c 102: See note following RCW 43.70.130.

43.70.320 Health professions account—Fees credited—Requirements for biennial budget request. There is created in the state treasury an account to be known as the health professions account. All fees received by the department for health professions licenses, registration, certifications, renewals, or examinations shall be forwarded to the state treasurer who shall credit such moneys to the health professions account. All expenses incurred in carrying out the health professions licensing activities of the department shall be paid from the account as authorized by legislative appropriation. Any residue in the account shall be accumulated and shall not revert to the general fund at the end of the biennium.

The secretary shall biennially prepare a budget request based on the anticipated costs of administering the health professions licensing activities of the department which shall include the estimated income from health professions fees. [1991 1st sp.s. c 13 § 18; 1991 c 3 § 299; 1985 c 57 § 29; 1983 c 168 § 5. Formerly RCW 43.24.072.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

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

Severability—1983 c 168: See RCW 18.120.910.

43.70.330 Labor camps and farmworker housing—Inspector—Interagency agreement for inspections. (1) The department of health shall be the primary inspector of labor camps and farmworker housing for the state of Washington: PROVIDED, That the department of labor and industries shall be the inspector for all farmworker housing not covered by the authority of the state board of health.

(2) The department of health, the department of labor and industries, the department of community development, the state board of health, and the employment security department shall develop an interagency agreement defining the rules and responsibilities for the inspection of farmworker housing. This agreement shall recognize the department of health as the primary inspector of labor camps for the state, and shall further be designed to provide a central information center for public information and education regarding farmworker housing. The agencies shall provide the legislature with a report on the results of this agreement by January 1, 1991. [1990 c 253 § 2.]

Legislative finding and purpose—1990 c 253: "The legislature finds that the demand for housing for migrant and seasonal farmworkers far exceeds the supply of adequate housing in the state of Washington. In addition, increasing numbers of these housing units are in deteriorated condition because they cannot be economically maintained and repaired.

The legislature further finds that the lack of a clear program for the regulation and inspection of farmworker housing has impeded the construction and renovation of housing units in this state.

It is the purpose of this act for the various agencies involved in the regulation of farmworker housing to coordinate and consolidate their activities to provide for efficient and effective monitoring of farmworker housing. It is intended that this action will provide greater responsiveness in dealing with public concerns over farmworker housing, and allow greater numbers of housing units to be built." [1990 c 253 § 1.]

43.70.340 Farmworker housing inspection fund—Fee on labor camp operating license—Licenses generally. (1) The farmworker housing inspection fund is established in the custody of the state treasury. The department of health shall deposit all funds received under subsection (2) of this section and from the legislature to administer a labor camp inspection program conducted by the department of health. Disbursement from the fund shall be on authorization of the secretary of health or the secretary's designee. The fund is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements.

(2) There is imposed a fee on each operating license issued by the department of health to every operator of a labor camp that is regulated by the state board of health. The fee paid under this subsection shall include all necessary inspection of the units to ensure compliance with applicable state board of health rules on labor camps.

(a) Fifty dollars shall be charged for each labor camp containing six or less units.

(b) Seventy-five dollars shall be charged for each labor camp containing more than six units.

(3) The term of the operating license and the application procedures shall be established, by rule, by the department of health. [1990 c 253 § 3.]

Legislative finding and purpose—1990 c 253: See note following RCW 43.70.330.

43.70.400 Head injury prevention—Legislative finding. The legislature finds that head injury is a major cause of death and disability for Washington citizens. The costs of head injury treatment and rehabilitation are extensive and resultant disabilities are long and indeterminate. These costs are often borne by public programs such as medicaid. The legislature finds further that many such injuries are preventable. The legislature intends to reduce the occurrence of head injury by educating persons whose behavior may place them at risk and by regulating certain activities. [1990 c 270 § 2.]

43.70.410 Head injury prevention—Program, generally. As used in RCW 43.70.400 through 43.70.440, the term "head injury" means traumatic brain injury.

A head injury prevention program is created in the department of health. The program's functions may be integrated with those of similar programs to promote comprehensive, integrated, and effective health promotion and disease prevention.

In consultation with the traffic safety commission, the department shall, directly or by contract, identify and coordinate public education efforts currently underway within state government and among private groups to prevent traumatic brain injury, including, but not limited to, bicycle safety, pedestrian safety, bicycle passenger seat safety, motorcycle safety, motor vehicle safety, and sports safety. If the department finds that programs are not available or not in use, it may, within funds appropriated for the purpose, provide grants to promote public education efforts. Grants may be awarded only after recipients have demonstrated coordination with relevant and knowledgeable groups within their communities, including at least schools, brain injury support organizations, hospitals, physicians, traffic safety specialists, police, and the public. The department may accept grants, gifts, and donations from public or private sources to use to carry out the head injury prevention program.

The department may assess or contract for the assessment of the effectiveness of public education efforts coordinated or initiated by any agency of state government. Agencies are directed to cooperate with assessment efforts by providing access to data and program records as reasonably required. The department may seek and receive additional funds from the federal government or private sources for assessments. Assessments shall contain findings and recommendations that will improve the effectiveness of public education efforts. These findings shall be distributed among public and private groups concerned with traumatic brain injury prevention. [1990 c 270 § 3.]

43.70.420 Head injury prevention—Information preparation. The department of health, the department of licensing, and the traffic safety commission shall jointly prepare information for driver license manuals, driver education programs, and driving tests to increase driver awareness of pedestrian safety, to increase driver skills in avoiding pedestrian and motor vehicle accidents, and to determine drivers' abilities to avoid pedestrian motor vehicle accidents. [1990 c 270 § 4.]

43.70.430 Head injury prevention—Guidelines on training and education—Training of emergency medical personnel. The department shall prepare guidelines on relevant training and education regarding traumatic brain injury for health and education professionals, and relevant public safety and law enforcement officials. The department shall distribute such guidelines and any recommendations for training or educational requirements for health professionals or educators to the disciplinary authorities governed by chapter 18.130 RCW and to educational service districts established under chapter 28A.310 RCW. Specifically, all emergency medical personnel shall be trained in proper helmet removal. [1990 c 270 § 6.]

43.70.440 Head injury prevention act—Short title. *This act shall be known and cited as the Head Injury Prevention Act of 1990. [1990 c 270 § 1.]

*Reviser's note: "This act" consists of the enactment of RCW 43.70.400 through 43.70.440 and the 1990 c 270 amendments to RCW 46.37.530 and 46.37.535.

43.70.900 References to the secretary or department of social and health services—1989 1st ex.s. c 9. All references to the secretary or department of social and health services in the Revised Code of Washington shall be construed to mean the secretary or department of health when referring to the functions transferred in RCW 43.70.080, 15.36.005, 18.104.005, 19.32.005, 28A.210.005, 43.83B.005, 43.99D.005, 43.99E.005, 70.05.005, 70.08.005, 70.12.005, 70.22.005, 70.24.005, 70.40.005, 70.41.005, and 70.54.005. [1990 c 33 § 580; 1989 1st ex.s. c 9 § 801.]

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

Chapter 43.78

PUBLIC PRINTER—PUBLIC PRINTING

Sections

43.78.170 Recycled content requirement.

43.78.170 Recycled content requirement. The public printer shall take all actions consistent with the plan under RCW 43.19A.050 to ensure that seventy-five percent or more of the total dollar amount of printing paper stock used by the printer is recycled content paper by January 1, 1995. [1991 c 297 § 10.]

Captions not law—1991 c 297: See RCW 43.19A.900.

Chapter 43.79
STATE FUNDS

Sections	
43.79.110	Scientific permanent fund.
43.79.130	Agricultural permanent fund.
43.79.201	C.E.P. & R.I. account—Moneys transferred to charitable, educational, penal and reformatory institutions account—Exception.
43.79.330	Miscellaneous state funds—Moneys transferred to accounts in the state treasury.
43.79.415	Repealed.
43.79.425	Current state school fund—Abolished—Moneys transferred.
43.79.445	Death investigations account—Disbursal.

43.79.110 Scientific permanent fund. There shall be in the state treasury a permanent and irreducible fund known as the "scientific permanent fund," into which shall be paid all moneys derived from the sale of lands set apart by the enabling act or otherwise for a scientific school. The income derived from investments pursuant to RCW 43.84.080 shall be credited to the Washington State University building account less the allocation to the state treasurer's service fund pursuant to RCW 43.08.190. [1991 1st sp.s. c 13 § 96; 1965 c 8 § 43.79.110. Prior: 1901 c 81 § 4; RRS § 5526.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

43.79.130 Agricultural permanent fund. There shall be in the state treasury a permanent and irreducible fund known as the "agricultural permanent fund," into which shall be paid all moneys derived from the sale of lands set apart by the enabling act or otherwise for an agricultural college. The income derived from investments pursuant to RCW 43.84.080 shall be credited to the Washington State University building account less the allocation to the state treasurer's service account [fund] pursuant to RCW 43.08.190. [1991 1st sp.s. c 13 § 94; 1965 c 8 § 43.79.130.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

43.79.201 C.E.P. & R.I. account—Moneys transferred to charitable, educational, penal and reformatory institutions account—Exception. (1) The charitable, educational, penal and reformatory institutions account is hereby created, in the state treasury, into which account there shall be deposited all moneys arising from the sale, lease or transfer of the land granted by the United States government to the state for charitable, educational, penal and reformatory institutions by section 17 of the enabling act, or otherwise set apart for such institutions, except all moneys arising from the sale, lease, or transfer of that certain one hundred thousand acres of such land assigned for the support of the University of Washington by chapter 91, Laws of 1903 and section 9, chapter 122, Laws of 1893.

(2) If feasible, not less than one-half of all income to the charitable, educational, penal, and reformatory institutions account shall be appropriated for the purpose

of providing housing, including repair and renovation of state institutions, for persons who are mentally ill, developmentally disabled, or youth who are blind, deaf, or otherwise disabled. If moneys are appropriated for community-based housing, the moneys shall be appropriated to the department of community development for the housing assistance program under chapter 43.185 RCW. [1991 1st sp.s. c 13 § 39; 1991 c 204 § 3; 1985 c 57 § 37; 1965 ex.s. c 135 § 2; 1965 c 8 § 43.79.201. Prior: 1961 c 170 § 1.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

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

Income potential: RCW 79.01.007.

Inventory of land: RCW 79.01.006.

43.79.330 Miscellaneous state funds—Moneys transferred to accounts in the state treasury. All moneys to the credit of the following state funds on the first day of August, 1955, and all moneys thereafter paid to the state treasurer for or to the credit of such funds, are hereby transferred to the following accounts in the state treasury, the creation of which is hereby authorized:

(1) Capitol building construction fund moneys, to the capitol building construction account;

(2) Cemetery fund moneys, to the cemetery account;

(3) Feed and fertilizer fund moneys, to the feed and fertilizer account;

(4) Forest development fund moneys, to the forest development account;

(5) Harbor improvement fund moneys, to the harbor improvement account;

(6) Millersylvania Park current fund moneys, to the Millersylvania Park current account;

(7) Puget Sound pilotage fund moneys, to the Puget Sound pilotage account;

(8) Real estate commission fund moneys, to the real estate commission account;

(9) Reclamation revolving fund moneys, to the reclamation revolving account;

(10) University of Washington building fund moneys, to the University of Washington building account; and

(11) State College of Washington building fund moneys, to the Washington State University building account. [1991 1st sp.s. c 13 § 3; 1985 c 57 § 38; 1981 c 242 § 3; 1980 c 32 § 3; 1979 ex.s. c 67 § 3; 1965 c 8 § 43.79.330. Prior: 1959 c 273 § 6; 1957 c 115 § 6; 1955 c 370 § 1.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

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

Effective dates—1981 c 242: "Sections 1, 2, and 4 of this 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 July 1, 1981. Section 3 of this act shall take effect September 1, 1981." [1981 c 242 § 5.] Sections 1, 2, and 3 of this act are the 1981 c 242 amendments to RCW 43.33A.160, 43.84.090, and 43.79.330, respectively. Section 4 of this act consists of the enactment of RCW 43.79.435.

Effective date—1980 c 32 § 3: "Section 3 of this act shall take effect September 1, 1981." [1980 c 32 § 4.]

Severability—1979 ex.s. c 67: See note following RCW 19.28.330.

43.79.415 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.79.425 Current state school fund—Abolished—Moneys transferred. On and after June 12, 1980, the current state school fund is abolished and the state treasurer shall transfer any moneys in such account on such June 12, 1980, or any moneys thereafter received for such account, to the common school construction fund as referred to in RCW 28A.515.320. [1990 c 33 § 581; 1980 c 6 § 6.]

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

Severability—1980 c 6: See note following RCW 28A.515.320.

43.79.445 Death investigations account—Disbursal. There is established an account in the state treasury referred to as the "death investigations' account" which shall exist for the purpose of receiving, holding, investing, and disbursing funds appropriated or provided in RCW 70.58.107 and any moneys appropriated or otherwise provided thereafter.

Moneys in the death investigations' account shall be disbursed by the state treasurer once every year on December 31 and at any other time determined by the treasurer. The treasurer shall make disbursements to: The state toxicology laboratory, counties for the cost of autopsies, the University of Washington to fund the state forensic pathology fellowship program, the state patrol for providing partial funding for the state dental identification system, the criminal justice training commission for training county coroners, medical examiners and their staff, and the state death investigations council.

The University of Washington and the Washington state death investigations council shall jointly determine the yearly amount for the state forensic pathology fellowship program established by RCW 28B.20.426. [1991 1st sp.s. c 13 § 21; 1991 c 176 § 4; 1986 c 31 § 2; 1985 c 57 § 41; 1983 1st ex.s. c 16 § 18.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Effective date—1986 c 31: See note following RCW 28B.20.426.

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

Severability—Effective date—1983 1st ex.s. c 16: See RCW 43.103.900 and 43.103.901.

Chapter 43.79A

TREASURER'S TRUST FUND

Sections

- 43.79A.020 Treasurer's trust fund—Created—Nontreasury trust funds to be placed in—Exceptions.
43.79A.040 Management—Income—Distribution.

43.79A.020 Treasurer's trust fund—Created—Nontreasury trust funds to be placed in—Exceptions. There is created a trust fund outside the state treasury to be known as the "treasurer's trust fund." All nontreasury trust funds which are in the custody of the state

treasurer on April 10, 1973, shall be placed in the treasurer's trust fund and be subject to the terms of this chapter. Funds of the state department of transportation shall be placed in the treasurer's trust fund only if mutually agreed to by the state treasurer and the department. In order to assure an orderly transition to a centralized management system, the state treasurer may place each of such trust funds in the treasurer's trust fund at such times as he deems advisable. Except for department of transportation trust funds, all such funds shall be incorporated in the treasurer's trust fund by June 30, 1975. Other funds in the custody of state officials or state agencies may, upon their request, be established as accounts in the treasurer's trust fund with the discretionary concurrence of the state treasurer. All income received from the treasurer's trust fund investments shall be deposited in the investment income account pursuant to RCW 43.79A.040. [1991 1st sp.s. c 13 § 81; 1984 c 7 § 47; 1973 1st ex.s. c 15 § 2.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Severability—1984 c 7: See note following RCW 47.01.141.

43.79A.040 Management—Income—Distribution. (1) Money in the treasurer's trust fund may be deposited, invested and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury.

(2) All income received from investment of the treasurer's trust fund shall be set aside in an account in the treasury trust fund to be known as the investment income account. Monthly, the state treasurer shall distribute the earnings credited to the investment income account to the state general fund except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The American Indian scholarship endowment fund, the energy account, the game farm alternative account, and the self-insurance revolving fund. However, the earnings to be distributed shall first be reduced by the allocation to the state treasurer's service account [fund] pursuant to RCW 43.08.190.

(b) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advanced right of way revolving fund, the federal narcotics asset forfeitures account, the ferry system account, the ferry system insurance claim reserve account, the ferry system operation and maintenance account, the ferry system revenue account, the ferry system revenue bond account, the high occupancy vehicle account, and the local rail service assistance account.

(3) In conformance with Article II, section 37 of the state Constitution, no trust accounts or funds shall be allocated earnings without the specific affirmative directive of this section. [1991 1st sp.s. c 13 § 82; 1973 1st ex.s. c 15 § 4.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Chapter 43.82

STATE AGENCY HOUSING

Sections

43.82.010 Acquisition and disposal of real estate for state agencies—Generally—Studies—Delegation of functions—Exemptions.

43.82.010 Acquisition and disposal of real estate for state agencies—Generally—Studies—Delegation of functions—Exemptions. (1) The director of the department of general administration, on behalf of the agency involved, shall purchase, lease, rent, or otherwise acquire all real estate, improved or unimproved, as may be required by elected state officials, institutions, departments, commissions, boards, and other state agencies, or federal agencies where joint state and federal activities are undertaken and may grant easements and transfer, exchange, sell, lease, or sublease all or part of any surplus real estate for those state agencies which do not otherwise have the specific authority to dispose of real estate. This section does not transfer financial liability for the acquired property to the department of general administration.

(2) Except for real estate occupied by federal agencies, the director shall determine the location, size, and design of any real estate or improvements thereon acquired or held pursuant to subsection (1) of this section.

(3) The director is authorized to purchase, lease, rent, or otherwise acquire improved or unimproved real estate as owner or lessee and to lease or sublet all or a part of such real estate to state or federal agencies. The director shall charge each using agency its proportionate rental which shall include an amount sufficient to pay all costs, including, but not limited to, those for utilities, janitorial and accounting services, and sufficient to provide for contingencies; which shall not exceed five percent of the average annual rental, to meet unforeseen expenses incident to management of the real estate.

(4) If the director determines that it is necessary or advisable to undertake any work, construction, alteration, repair, or improvement on any real estate acquired pursuant to subsections (1) or (3) of this section, the director shall cause plans and specifications thereof and an estimate of the cost of such work to be made and filed in his office and the state agency benefiting thereby is hereby authorized to pay for such work out of any available funds: PROVIDED, That the cost of executing such work shall not exceed the sum of twenty-five thousand dollars. Work, construction, alteration, repair, or improvement in excess of twenty-five thousand dollars, other than that done by the owner of the property if other than the state, shall be performed in accordance with the public works law of this state.

(5) In order to obtain maximum utilization of space, the director shall make space utilization studies, and shall establish standards for use of space by state agencies.

(6) The director may construct new buildings on, or improve existing facilities, and furnish and equip, all real estate under his management.

(7) All conveyances and contracts to purchase, lease, rent, transfer, exchange, or sell real estate and to grant and accept easements shall be approved as to form by the attorney general, signed by the director or the director's designee, and recorded with the county auditor of the county in which the property is located.

(8) The director may delegate any or all of the functions specified in this section to any agency upon such terms and conditions as the director deems advisable.

(9) This section does not apply to the acquisition of real estate by:

(a) The state college and universities for research or experimental purposes;

(b) The state liquor control board for liquor stores and warehouses; and

(c) The department of natural resources, the department of fisheries, the department of wildlife, the department of transportation, and the state parks and recreation commission for purposes other than the leasing of offices, warehouses, and real estate for similar purposes.

(10) Notwithstanding any provision in this chapter to the contrary, the department of general administration may negotiate ground leases for public lands on which property is to be acquired under a financing contract pursuant to chapter 39.94 RCW under terms approved by the state finance committee. [1990 c 47 § 1; 1988 c 36 § 20; 1982 c 41 § 1; 1969 c 121 § 1; 1967 c 229 § 1; 1965 c 8 § 43.82.010. Prior: 1961 c 184 § 1; 1959 c 255 § 1.]

Effective dates—1982 c 41: "This act shall take effect July 1, 1982, with the exception of section 2 of this act, which shall take effect July 1, 1983." [1982 c 41 § 3.] "Section 2 of this act" consists of the 1982 c 41 amendment to RCW 43.19.500.

East capitol site, acquisition and development: RCW 79.24.500 through 79.24.530.

Housing costs for state offices and departments: RCW 43.01.090.

Public works: Chapter 39.04 RCW.

Use of department of general administration facilities and services revolving fund in acquiring real estate: RCW 43.19.500.

Chapter 43.83

CAPITAL IMPROVEMENTS

Sections

43.83.020 Limited obligation bonds—Proceeds to be deposited in state building construction account—Use.

43.83.020 Limited obligation bonds—Proceeds to be deposited in state building construction account—Use. The proceeds from the sale of the bonds authorized herein shall be deposited in the state building construction account which is hereby established in the state treasury and shall be used exclusively for the purposes of carrying out the provisions of the capital appropriation acts, and for payment of the expense incurred in the printing, issuance, and sale of such bonds. [1991 1st sp.s.]

c 13 § 46; 1987 1st ex.s. c 3 § 9; 1985 c 57 § 43; 1965 c 8 § 43.83.020. Prior: 1959 ex.s. c 9 § 2.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Severability—1987 1st ex.s. c 3: See RCW 43.99G.901.

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

Chapter 43.83A

WASTE DISPOSAL FACILITIES BOND ISSUE

Sections

- 43.83A.020 General obligation bonds—Authorized—Issuance, sale, terms—Appropriation required.
43.83A.030 Proceeds to be deposited in state and local improvements revolving account.

43.83A.020 General obligation bonds—Authorized—Issuance, sale, terms—Appropriation required. For the purpose of providing funds for the planning, acquisition, construction, and improvement of public waste disposal facilities in this state, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of one hundred ninety-five million dollars or so much thereof as may be required to finance the improvements defined in this chapter and all costs incidental thereto. As used in this section the phrase "public waste disposal facilities" shall not include the acquisition of equipment used to collect, carry, and transport garbage. These bonds shall be paid and discharged within twenty years of the date of issuance or within thirty years should Article VIII of the Constitution of the state of Washington be amended to permit such longer term. No bonds authorized by this chapter shall be offered for sale without prior legislative appropriation of the proceeds of such bonds to be sold. [1990 1st ex.s. c 15 § 7. Prior: 1989 1st ex.s. c 14 § 10; 1989 c 136 § 2; 1977 ex.s. c 242 § 1; 1972 ex.s. c 127 § 2.]

Severability—1990 1st ex.s. c 15: See note following RCW 43.99H.010.

Severability—Effective dates—1989 1st ex.s. c 14: See RCW 43.99H.900 and 43.99H.901.

Intent—1989 c 136: "It is the intent of this act to allow the sale of state general obligation bonds to underwriters at a discount so that they may be sold to the public at face value, thereby resulting in lower interest costs to the state. Increases in bond authorizations under this act represent this discount and will have no effect on the amount of money available for the projects to be financed by the bonds." [1989 c 136 § 1.]

Severability—1977 ex.s. c 242: "If any provision of this 1977 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." [1977 ex.s. c 242 § 6.]

43.83A.030 Proceeds to be deposited in state and local improvements revolving account. The proceeds from the sale of bonds authorized by this chapter shall be deposited in the state and local improvements revolving account hereby created in the state treasury and shall be used exclusively for the purpose specified in this chapter

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and for payment of the expenses incurred in the issuance and sale of the bonds. [1991 1st sp.s. c 13 § 43; 1985 c 57 § 44; 1972 ex.s. c 127 § 3.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

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

Chapter 43.83B

WATER SUPPLY FACILITIES

Sections

- 43.83B.030 Proceeds to be deposited in state and local improvements revolving account.
43.83B.360 State emergency water projects revolving account—Proceeds from sale of bonds.
43.83B.380 Appropriations to department of health—Authorized projects—Conditions.

43.83B.030 Proceeds to be deposited in state and local improvements revolving account. The proceeds from the sale of bonds authorized by this chapter shall be deposited in the state and local improvements revolving account hereby created in the state treasury and shall be used exclusively for the purpose specified in this chapter and for payment of the expenses incurred in the issuance and sale of the bonds. [1991 1st sp.s. c 13 § 53; 1985 c 57 § 45; 1972 ex.s. c 128 § 3.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

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

43.83B.360 State emergency water projects revolving account—Proceeds from sale of bonds. The proceeds from the sale of bonds authorized by RCW 43.83B.300, and 43.83B.355 through 43.83B.375 shall be deposited in the state emergency water projects revolving account, hereby created in the state treasury, and shall be used exclusively for the purposes specified in RCW 43.83B.300, and 43.83B.355 through 43.83B.375 and for the payment of expenses incurred in the issuance and sale of such bonds. [1991 1st sp.s. c 13 § 33; 1985 c 57 § 46; 1977 ex.s. c 1 § 13.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

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

43.83B.380 Appropriations to department of health—Authorized projects—Conditions. There is hereby appropriated to the department of health the sum of nine million seven hundred thirty-seven thousand dollars, or so much thereof as may be necessary, for the biennium ending June 30, 1977, from the general fund—state and local improvements revolving account—water supply facilities for the purposes authorized in *RCW 43.83B.300 through 43.83B.345 and 43.83B.210 as now or hereafter amended relating to the emergency water conditions arising from the drought forecast for the summer and fall of 1977 affecting municipal and industrial water supply distribution facilities. Prior to the expenditure of funds for projects approved by the

department, the department shall file a listing of the approved projects with the senate ways and means committee and the house appropriations committee.

(2) There is hereby appropriated to the department of health the sum of five million three hundred twenty-seven thousand dollars, or so much thereof as may be necessary, for the biennium ending June 30, 1977, from the general fund—state and local improvements revolving account—water supply facilities to be expended for municipal and industrial water supply and distribution facility projects for which applications are in progress on March 25, 1977 and have arisen from the drought forecast for the summer and fall of 1977. Prior to the expenditure of funds for projects approved by the department, the department shall file a listing of the approved projects with the senate ways and means committee and the house appropriations committee.

The municipal and industrial water supply and distribution facilities receiving funds from the appropriations contained in this section shall comply with the eligible costs criteria, health and design standards, and contract performance requirements of the municipal and industrial funding program under chapter 43.83B RCW. All projects shall be evaluated by applying the said chapter's evaluation and prioritization criteria to insure that only projects related to water shortage problems receive funding. The projects funded shall be limited to those projects providing interties with adjacent utilities, an expanded source of supply, conservation projects which will conserve or maximize efficiency of the existing supply, or a new source of supply. No obligation to provide a grant for a project authorized under this section shall be incurred after June 30, 1977. [1991 c 3 § 300; 1977 ex.s. c 1 § 17.]

*Reviser's note: RCW 43.83B.305 through 43.83B.330 and 43.83B.340 through 43.83B.344 were repealed by 1989 c 171 § 12.

Chapter 43.83C

RECREATION IMPROVEMENTS BOND ISSUE

Sections

43.83C.030 Proceeds to be deposited in state and local improvements revolving account.

43.83C.030 Proceeds to be deposited in state and local improvements revolving account. The proceeds from the sale of bonds authorized by this chapter shall be deposited in the state and local improvements revolving account hereby created in the state treasury and shall be used exclusively for the purpose specified in this chapter and for payment of the expenses incurred in the issuance and sale of the bonds. [1991 1st sp.s. c 13 § 54; 1985 c 57 § 47; 1972 ex.s. c 129 § 3.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

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

Chapter 43.83D

SOCIAL AND HEALTH SERVICES FACILITIES 1972 BOND ISSUE

Sections

43.83D.030 Proceeds to be deposited in state and local improvements revolving account.

43.83D.030 Proceeds to be deposited in state and local improvements revolving account. The proceeds from the sale of bonds authorized by this chapter shall be deposited in the state and local improvements revolving account in the state treasury and shall be used exclusively for the purpose specified in this chapter and for payment of the expenses incurred in the issuance and sale of the bonds. [1991 1st sp.s. c 13 § 55; 1985 c 57 § 48; 1972 ex.s. c 130 § 3.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

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

Chapter 43.83H

SOCIAL AND HEALTH SERVICES FACILITIES— BOND ISSUES

Sections

43.83H.030 Proceeds of bonds.

43.83H.030 Proceeds of bonds. The proceeds from the sale of bonds authorized by *this chapter shall be deposited in the state social and health services construction account hereby created in the state treasury and shall be used exclusively for the purposes specified in this chapter and for the payment of expenses incurred in the issuance and sale of such bonds. [1991 1st sp.s. c 13 § 56; 1985 c 57 § 49; 1975-'76 2nd ex.s. c 125 § 3.]

*Reviser's note: A literal translation of "this chapter" is RCW 43.83H.010 through 43.83H.060 and 43.83H.900.

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

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

Chapter 43.83I

DEPARTMENT OF FISHERIES—BOND ISSUES

Sections

43.83I.166 Repealed.

43.83I.166 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 43.84

INVESTMENTS AND INTERFUND LOANS

Sections

43.84.051 Management of permanent funds—Collection of interest, income and principal of securities—Disposition.

43.84.090 Repealed.

43.84.092 Deposit of surplus balance investment earnings—
Treasury income account—Accounts and funds
credited.

**43.84.051 Management of permanent funds—
Collection of interest, income and principal of securities—Disposition.** It shall be the duty of the state treasurer to collect the interest, or other income on, and the principal of the securities held in his or her custody pursuant to RCW 43.84.041 as the said sums become due and payable, and to pay the same when so collected into the respective funds to which the principal and interest shall accrue, less the allocation to the state treasurer's service account [fund] pursuant to RCW 43.08.190 and the state investment board expense account pursuant to RCW 43.33A.160. [1991 1st sp.s. c 13 § 93; 1965 ex.s. c 104 § 5.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

43.84.090 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.84.092 Deposit of surplus balance investment earnings—Treasury income account—Accounts and funds credited. (1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the common school construction fund, the county criminal justice assistance account, the county sales and use tax equalization account, the deferred compensation administrative account, the deferred compensation principal account, the department of retirement systems expense account, the Eastern Washington University capital projects account, the federal forest revolving account, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local sales and use tax account, the medical aid account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the perpetual surveillance and maintenance account, the public employees' retirement system plan I account, the public employees' retirement system plan II account, the Puyallup tribal settlement account, the resource management cost account, the site closure account, the special wildlife account, the state employees'

insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the supplemental pension account, the teachers' retirement system plan I account, the teachers' retirement system plan II account, the University of Washington bond retirement fund, the University of Washington building account, the volunteer fire fighters' relief and pension principal account, the volunteer fire fighters' relief and pension administrative account, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan I retirement account, the Washington law enforcement officers' and fire fighters' system plan II retirement account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (2)(a) shall first be reduced by the allocation to the state treasurer's service account [fund] pursuant to RCW 43.08.190.

(b) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The central Puget Sound public transportation account, the city hardship assistance account, the county arterial preservation account, the economic development account, the essential rail assistance account, the essential rail banking account, the ferry bond retirement fund, the grade crossing protective fund, the high capacity transportation account, the highway bond retirement fund, the highway construction stabilization account, the highway safety account, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the special category C account, the state patrol highway account, the transfer relief account, the transportation capital facilities account, the transportation equipment fund, the transportation fund, the transportation improvement account, and the urban arterial trust account.

(3) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section. [1991 1st sp.s. c 13 § 57; 1990 2nd ex.s. c 1 § 204; 1989 c 419 § 12; 1985 c 57 § 51.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Applicability—1990 2nd ex.s. c 1: See note following RCW 82.14.050.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Intent—Effective date—1989 c 419: See notes following RCW 4.92.006.

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

Chapter 43.88

STATE BUDGETING, ACCOUNTING, AND REPORTING SYSTEM

(Formerly: Budget and accounting)

Sections

43.88.020	Definitions. (Effective until April 1, 1992.)
43.88.020	Definitions. (Effective April 1, 1992.)
43.88.030	Instructions for submitting budget requests—Content of the budget document or documents—Separate budget document or schedules—Format changes. (Effective until April 1, 1992.)
43.88.030	Instructions for submitting budget requests—Content of the budget document or documents—Separate budget document or schedules—Format changes. (Effective April 1, 1992.)
43.88.031	Capital appropriation bill—Estimated general fund debt service costs.
43.88.110	Expenditure programs—Allotments—Reserves. (Effective until April 1, 1992.)
43.88.110	Expenditure programs—Allotments—Reserves—Monitor capital appropriations. (Effective April 1, 1992.)
43.88.120	Revenue estimates. (Effective April 1, 1992.)
43.88.122	Transportation agency revenue forecasts—Variances. (Effective April 1, 1992.)
43.88.150	Priority of expenditures—Appropriated and nonappropriated funds—Matching funds, disburse state moneys proportionally.
43.88.160	Fiscal management—Powers and duties of officers and agencies. (Effective April 1, 1992.)
43.88.175	Credit reporting agencies—State agency use.
43.88.195	Establishment of accounts or funds outside treasury without permission of director of financial management prohibited.
43.88.525	Budget stabilization account—Deposits—Request for transfers to account.

43.88.020 Definitions. (Effective until April 1, 1992.) (1) "Budget" shall mean a proposed plan of expenditures for a given period or purpose and the proposed means for financing these expenditures.

(2) "Budget document" shall mean a formal, written statement offered by the governor to the legislature, as provided in RCW 43.88.030.

(3) "Director of financial management" shall mean the official appointed by the governor to serve at the governor's pleasure and to whom the governor may delegate necessary authority to carry out the governor's duties as provided in this chapter. The director of financial management shall be head of the office of financial management which shall be in the office of the governor.

(4) "Agency" shall mean and include every state office, officer, each institution, whether educational, correctional or other, and every department, division, board and commission, except as otherwise provided in this chapter.

(5) "Public funds", for purposes of this chapter, shall mean all moneys, including cash, checks, bills, notes, drafts, stocks and bonds, whether held in trust, for operating purposes, or for capital purposes, and collected or disbursed under law, whether or not such funds are otherwise subject to legislative appropriation, including funds maintained outside the state treasury.

(6) "Regulations" shall mean the policies, standards and requirements, stated in writing, designed to carry out the purposes of this chapter, as issued by the governor or the governor's designated agent, and which shall have the force and effect of law.

(7) "Ensuing biennium" shall mean the fiscal biennium beginning on July 1st of the same year in which a regular session of the legislature is held during an odd-numbered year pursuant to Article II, section 12 of the Constitution and which biennium next succeeds the current biennium.

(8) "Dedicated fund" means a fund in the state treasury, or a separate account or fund in the general fund in the state treasury, that by law is dedicated, appropriated or set aside for a limited object or purpose; but "dedicated fund" shall not include a revolving fund or a trust fund.

(9) "Revolving fund" means a fund in the state treasury, established by law, from which is paid the cost of goods or services furnished to or by a state agency, and which is replenished through charges made for such goods or services or through transfers from other accounts or funds.

(10) "Trust fund" means a fund in the state treasury in which designated persons or classes of persons have a vested beneficial interest or equitable ownership, or which was created or established by a gift, grant, contribution, devise, or bequest that limits the use of the fund to designated objects or purposes.

(11) "Administrative expenses" means expenditures for: (a) Salaries, wages, and related costs of personnel and (b) operations and maintenance including but not limited to costs of supplies, materials, services, and equipment.

(12) "Fiscal year" means the year beginning July 1st and ending the following June 30th.

(13) "Lapse" means the termination of authority to expend an appropriation.

(14) "Legislative fiscal committees" means the legislative budget committee, the legislative evaluation and accountability program committee, the ways and means committees of the senate and house of representatives, and, where appropriate, the legislative transportation committee.

(15) "Fiscal period" means the period for which an appropriation is made as specified within the act making the appropriation.

(16) "Primary budget driver" means the primary determinant of a budget level, other than a price variable, which causes or is associated with the major expenditure of an agency or budget unit within an agency, such as a caseload, enrollment, workload, or population statistic.

(17) "Stabilization account" means the budget stabilization account created under RCW 43.88.525 as an account in the general fund of the state treasury.

(18) "State tax revenue limit" means the limitation created by chapter 43.135 RCW.

(19) "General state revenues" means the revenues defined by Article VIII, section 1(c) of the state Constitution.

(20) "Annual growth rate in real personal income" means the estimated percentage growth in personal income for the state during the current fiscal year, expressed in constant value dollars, as published by the office of financial management or its successor agency.

(21) "Estimated revenues" means estimates of revenue in the most recent official economic and revenue forecast prepared under RCW 82.33.020, and prepared by the office of financial management for those funds, accounts, and sources for which the office of the economic and revenue forecast council does not prepare an official forecast.

(22) "Estimated receipts" means the estimated receipt of cash in the most recent official economic and revenue forecast prepared under RCW 82.33.020, and prepared by the office of financial management for those funds, accounts, and sources for which the office of the economic and revenue forecast council does not prepare an official forecast.

(23) "State budgeting, accounting, and reporting system" means a system that gathers, maintains, and communicates fiscal information. The system links fiscal information beginning with development of agency budget requests through adoption of legislative appropriations to tracking actual receipts and expenditures against approved plans.

(24) "Allotment of appropriation" means the agency's statement of proposed expenditures, the director of financial management's review of that statement, and the placement of the approved statement into the state budgeting, accounting, and reporting system.

(25) "Statement of proposed expenditures" means a plan prepared by each agency that breaks each appropriation out into monthly detail representing the best estimate of how the appropriation will be expended.

(26) "Undesignated fund balance (or deficit)" means unreserved and undesignated current assets or other resources available for expenditure over and above any current liabilities which are expected to be incurred by the close of the fiscal period. [1990 c 229 § 4; 1987 c 502 § 1; 1986 c 215 § 2; 1984 c 138 § 6; 1982 1st ex.s. c 36 § 1. Prior: 1981 c 280 § 6; 1981 c 270 § 2; 1980 c 87 § 25; 1979 c 151 § 135; 1975-'76 2nd ex.s. c 83 § 4; 1973 1st ex.s. c 100 § 2; 1969 ex.s. c 239 § 9; 1965 c 8 § 43.88.020; prior: 1959 c 328 § 2.]

Effective date—1990 c 229: See note following RCW 41.06.087.

Effective date—Severability—1981 c 280: See notes following RCW 43.88.520.

Effective date—Severability—1981 c 270: See notes following RCW 43.88.010.

Office of financial management: Chapter 43.41 RCW.

43.88.020 Definitions. (Effective April 1, 1992.) (1) "Budget" means a proposed plan of expenditures for a given period or purpose and the proposed means for financing these expenditures.

(2) "Budget document" means a formal, written statement offered by the governor to the legislature, as provided in RCW 43.88.030.

(3) "Director of financial management" means the official appointed by the governor to serve at the governor's pleasure and to whom the governor may delegate necessary authority to carry out the governor's duties as provided in this chapter. The director of financial management shall be head of the office of financial management which shall be in the office of the governor.

(4) "Agency" means and includes every state office, officer, each institution, whether educational, correctional or other, and every department, division, board and commission, except as otherwise provided in this chapter.

(5) "Public funds", for purposes of this chapter, means all moneys, including cash, checks, bills, notes, drafts, stocks, and bonds, whether held in trust, for operating purposes, or for capital purposes, and collected or disbursed under law, whether or not such funds are otherwise subject to legislative appropriation, including funds maintained outside the state treasury.

(6) "Regulations" means the policies, standards, and requirements, stated in writing, designed to carry out the purposes of this chapter, as issued by the governor or the governor's designated agent, and which shall have the force and effect of law.

(7) "Ensuing biennium" means the fiscal biennium beginning on July 1st of the same year in which a regular session of the legislature is held during an odd-numbered year pursuant to Article II, section 12 of the Constitution and which biennium next succeeds the current biennium.

(8) "Dedicated fund" means a fund in the state treasury, or a separate account or fund in the general fund in the state treasury, that by law is dedicated, appropriated or set aside for a limited object or purpose; but "dedicated fund" does not include a revolving fund or a trust fund.

(9) "Revolving fund" means a fund in the state treasury, established by law, from which is paid the cost of goods or services furnished to or by a state agency, and which is replenished through charges made for such goods or services or through transfers from other accounts or funds.

(10) "Trust fund" means a fund in the state treasury in which designated persons or classes of persons have a vested beneficial interest or equitable ownership, or which was created or established by a gift, grant, contribution, devise, or bequest that limits the use of the fund to designated objects or purposes.

(11) "Administrative expenses" means expenditures for: (a) Salaries, wages, and related costs of personnel and (b) operations and maintenance including but not limited to costs of supplies, materials, services, and equipment.

(12) "Fiscal year" means the year beginning July 1st and ending the following June 30th.

(13) "Lapse" means the termination of authority to expend an appropriation.

(14) "Legislative fiscal committees" means the legislative budget committee, the legislative evaluation and accountability program committee, the ways and means committees of the senate and house of representatives,

and, where appropriate, the legislative transportation committee.

(15) "Fiscal period" means the period for which an appropriation is made as specified within the act making the appropriation.

(16) "Primary budget driver" means the primary determinant of a budget level, other than a price variable, which causes or is associated with the major expenditure of an agency or budget unit within an agency, such as a caseload, enrollment, workload, or population statistic.

(17) "Stabilization account" means the budget stabilization account created under RCW 43.88.525 as an account in the general fund of the state treasury.

(18) "State tax revenue limit" means the limitation created by chapter 43.135 RCW.

(19) "General state revenues" means the revenues defined by Article VIII, section 1(c) of the state Constitution.

(20) "Annual growth rate in real personal income" means the estimated percentage growth in personal income for the state during the current fiscal year, expressed in constant value dollars, as published by the office of financial management or its successor agency.

(21) "Estimated revenues" means estimates of revenue in the most recent official economic and revenue forecast prepared under RCW 82.33.020, and prepared by the office of financial management for those funds, accounts, and sources for which the office of the economic and revenue forecast council does not prepare an official forecast including estimates of revenues to support financial plans under RCW 44.40.070, that are prepared by the office of financial management in consultation with the interagency task force.

(22) "Estimated receipts" means the estimated receipt of cash in the most recent official economic and revenue forecast prepared under RCW 82.33.020, and prepared by the office of financial management for those funds, accounts, and sources for which the office of the economic and revenue forecast council does not prepare an official forecast.

(23) "State budgeting, accounting, and reporting system" means a system that gathers, maintains, and communicates fiscal information. The system links fiscal information beginning with development of agency budget requests through adoption of legislative appropriations to tracking actual receipts and expenditures against approved plans.

(24) "Allotment of appropriation" means the agency's statement of proposed expenditures, the director of financial management's review of that statement, and the placement of the approved statement into the state budgeting, accounting, and reporting system.

(25) "Statement of proposed expenditures" means a plan prepared by each agency that breaks each appropriation out into monthly detail representing the best estimate of how the appropriation will be expended.

(26) "Undesignated fund balance (or deficit)" means unreserved and undesignated current assets or other resources available for expenditure over and above any current liabilities which are expected to be incurred by

the close of the fiscal period. [1991 c 358 § 6; 1990 c 229 § 4; 1987 c 502 § 1; 1986 c 215 § 2; 1984 c 138 § 6; 1982 1st ex.s. c 36 § 1. Prior: 1981 c 280 § 6; 1981 c 270 § 2; 1980 c 87 § 25; 1979 c 151 § 135; 1975-'76 2nd ex.s. c 83 § 4; 1973 1st ex.s. c 100 § 2; 1969 ex.s. c 239 § 9; 1965 c 8 § 43.88.020; prior: 1959 c 328 § 2.]

Effective date—1991 c 358: See note following RCW 43.88.030.

Effective date—1990 c 229: See note following RCW 41.06.087.

Effective date—Severability—1981 c 280: See notes following RCW 43.88.520.

Effective date—Severability—1981 c 270: See notes following RCW 43.88.010.

Office of financial management: Chapter 43.41 RCW.

43.88.030 Instructions for submitting budget requests—Content of the budget document or documents—Separate budget document or schedules—Format changes. (Effective until April 1, 1992.) (1) The director of financial management shall provide all agencies with a complete set of instructions for submitting biennial budget requests to the director at least three months before agency budget documents are due into the office of financial management. The budget document or documents shall consist of the governor's budget message which shall be explanatory of the budget and shall contain an outline of the proposed financial policies of the state for the ensuing fiscal period and shall describe in connection therewith the important features of the budget. The message shall set forth the reasons for salient changes from the previous fiscal period in expenditure and revenue items and shall explain any major changes in financial policy. Attached to the budget message shall be such supporting schedules, exhibits and other explanatory material in respect to both current operations and capital improvements as the governor shall deem to be useful to the legislature. The budget document or documents shall set forth a proposal for expenditures in the ensuing fiscal period based upon the estimated revenues as approved by the economic and revenue forecast council for such fiscal period from the source and at the rates existing by law at the time of submission of the budget document. However, the estimated revenues for use in the governor's budget document may be adjusted to reflect budgetary revenue transfers and revenue estimates dependent upon budgetary assumptions of enrollments, workloads, and caseloads. All adjustments to the approved estimated revenues must be set forth in the budget document. The governor may additionally submit, as an appendix to each agency budget or to the budget document or documents, a proposal for expenditures in the ensuing fiscal period from revenue sources derived from proposed changes in existing statutes.

The budget document or documents shall also contain:

(a) Revenues classified by fund and source for the immediately past fiscal period, those received or anticipated for the current fiscal period, and those anticipated for the ensuing biennium;

(b) The undesignated fund balance or deficit, by fund;

(c) Such additional information dealing with expenditures, revenues, workload, performance and personnel as

the legislature may direct by law or concurrent resolution;

(d) Such additional information dealing with revenues and expenditures as the governor shall deem pertinent and useful to the legislature;

(e) Tabulations showing expenditures classified by fund, function, activity and object;

(f) A delineation of each agency's activities, including those activities funded from nonbudgeted, nonappropriated sources, including funds maintained outside the state treasury; and

(g) Identification of all proposed direct expenditures to implement the Puget Sound water quality plan under chapter 90.70 RCW, shown by agency and in total.

(2) The budget document or documents shall include detailed estimates of all anticipated revenues applicable to proposed operating or capital expenditures and shall also include all proposed operating or capital expenditures. The total of beginning undesignated fund balance and estimated revenues less working capital and other reserves shall equal or exceed the total of proposed applicable expenditures. The budget document or documents shall further include:

(a) Interest, amortization and redemption charges on the state debt;

(b) Payments of all reliefs, judgments and claims;

(c) Other statutory expenditures;

(d) Expenditures incident to the operation for each agency;

(e) Revenues derived from agency operations;

(f) Expenditures and revenues shall be given in comparative form showing those incurred or received for the immediately past fiscal period and those anticipated for the current biennium and next ensuing biennium;

(g) A showing and explanation of amounts of general fund obligations for debt service and any transfers of moneys that otherwise would have been available for general fund appropriations;

(h) Common school expenditures on a fiscal-year basis;

(i) A showing, by agency, of the value and purpose of financing contracts for the lease/purchase or acquisition of personal or real property for the current and ensuing fiscal periods.

(3) A separate budget document or schedule may be submitted consisting of:

(a) Expenditures incident to current or pending capital projects and to proposed new capital projects, relating the respective amounts proposed to be raised therefor by appropriations in the budget and the respective amounts proposed to be raised therefor by the issuance of bonds during the fiscal period;

(b) A capital program consisting of proposed capital projects for at least the two fiscal periods succeeding the next fiscal period. The capital program shall include for each proposed project a statement of the reason or purpose for the project along with an estimate of its cost;

(c) A capital plan consisting of proposed capital spending for at least four fiscal periods succeeding the next fiscal period;

(d) Such other information bearing upon capital projects as the governor shall deem to be useful to the legislature;

(e) Such other information relating to capital improvement projects as the legislature may direct by law or concurrent resolution.

(4) No change affecting the comparability of agency or program information relating to expenditures, revenues, workload, performance and personnel shall be made in the format of any budget document or report presented to the legislature under this section or RCW 43.88.160(1) relative to the format of the budget document or report which was presented to the previous regular session of the legislature during an odd-numbered year without prior legislative concurrence. Prior legislative concurrence shall consist of (a) a favorable majority vote on the proposal by the standing committees on ways and means of both houses if the legislature is in session or (b) a favorable majority vote on the proposal by members of the legislative evaluation and accountability program committee if the legislature is not in session. [1991 c 284 § 1; 1990 c 115 § 1. Prior: 1989 c 311 § 3; 1989 c 11 § 18; 1987 c 502 § 2; prior: 1986 c 215 § 3; 1986 c 112 § 1; 1984 c 138 § 7; 1981 c 270 § 3; 1980 c 87 § 26; 1977 ex.s. c 247 § 1; 1973 1st ex.s. c 100 § 3; 1965 c 8 § 43.88.030; prior: 1959 c 328 § 3.]

Severability—1989 c 11: See note following RCW 9A.56.220.

43.88.030 Instructions for submitting budget requests—Content of the budget document or documents—Separate budget document or schedules—

Format changes. (Effective April 1, 1992.) (1) The director of financial management shall provide all agencies with a complete set of instructions for submitting biennial budget requests to the director at least three months before agency budget documents are due into the office of financial management. The director shall provide agencies that are required under RCW 44.40.070 to develop comprehensive six-year program and financial plans with a complete set of instructions for submitting these program and financial plans at the same time that instructions for submitting other budget requests are provided. The budget document or documents shall consist of the governor's budget message which shall be explanatory of the budget and shall contain an outline of the proposed financial policies of the state for the ensuing fiscal period, as well as an outline of the proposed six-year financial policies where applicable, and shall describe in connection therewith the important features of the budget. The message shall set forth the reasons for salient changes from the previous fiscal period in expenditure and revenue items and shall explain any major changes in financial policy. Attached to the budget message shall be such supporting schedules, exhibits and other explanatory material in respect to both current operations and capital improvements as the governor shall deem to be useful to the legislature. The budget document or documents shall set forth a proposal for expenditures in the ensuing fiscal period, or six-year period where applicable, based upon the estimated revenues as approved by the economic and revenue forecast

council or upon the estimated revenues of the office of financial management for those funds, accounts, and sources for which the office of the economic and revenue forecast council does not prepare an official forecast, including those revenues anticipated to support the six-year programs and financial plans under RCW 44.40.070. In estimating revenues to support financial plans under RCW 44.40.070, the office of financial management shall rely on information and advice from the interagency revenue task force. Revenues shall be estimated for such fiscal period from the source and at the rates existing by law at the time of submission of the budget document, including the supplemental budgets submitted in the even-numbered years of a biennium. However, the estimated revenues for use in the governor's budget document may be adjusted to reflect budgetary revenue transfers and revenue estimates dependent upon budgetary assumptions of enrollments, workloads, and caseloads. All adjustments to the approved estimated revenues must be set forth in the budget document. The governor may additionally submit, as an appendix to each supplemental, biennial, or six-year agency budget or to the budget document or documents, a proposal for expenditures in the ensuing fiscal period from revenue sources derived from proposed changes in existing statutes.

Supplemental and biennial documents shall reflect a six-year expenditure plan consistent with estimated revenues from existing sources and at existing rates for those agencies required to submit six-year program and financial plans under RCW 44.40.070. Any additional revenue resulting from proposed changes to existing statutes shall be separately identified within the document as well as related expenditures for the six-year period.

The budget document or documents shall also contain:

(a) Revenues classified by fund and source for the immediately past fiscal period, those received or anticipated for the current fiscal period, those anticipated for the ensuing biennium, and those anticipated for the ensuing six-year period to support the six-year programs and financial plans required under RCW 44.40.070;

(b) The undesignated fund balance or deficit, by fund;

(c) Such additional information dealing with expenditures, revenues, workload, performance, and personnel as the legislature may direct by law or concurrent resolution;

(d) Such additional information dealing with revenues and expenditures as the governor shall deem pertinent and useful to the legislature;

(e) Tabulations showing expenditures classified by fund, function, activity and object;

(f) A delineation of each agency's activities, including those activities funded from nonbudgeted, nonappropriated sources, including funds maintained outside the state treasury; and

(g) Identification of all proposed direct expenditures to implement the Puget Sound water quality plan under chapter 90.70 RCW, shown by agency and in total.

(2) The budget document or documents shall include detailed estimates of all anticipated revenues applicable

to proposed operating or capital expenditures and shall also include all proposed operating or capital expenditures. The total of beginning undesignated fund balance and estimated revenues less working capital and other reserves shall equal or exceed the total of proposed applicable expenditures. The budget document or documents shall further include:

(a) Interest, amortization and redemption charges on the state debt;

(b) Payments of all reliefs, judgments and claims;

(c) Other statutory expenditures;

(d) Expenditures incident to the operation for each agency;

(e) Revenues derived from agency operations;

(f) Expenditures and revenues shall be given in comparative form showing those incurred or received for the immediately past fiscal period and those anticipated for the current biennium and next ensuing biennium, as well as those required to support the six-year programs and financial plans required under RCW 44.40.070;

(g) A showing and explanation of amounts of general fund and other funds obligations for debt service and any transfers of moneys that otherwise would have been available for appropriation;

(h) Common school expenditures on a fiscal-year basis;

(i) A showing, by agency, of the value and purpose of financing contracts for the lease/purchase or acquisition of personal or real property for the current and ensuing fiscal periods.

(3) A separate capital budget document or schedule shall be submitted that will contain the following:

(a) A capital plan consisting of proposed capital spending for at least four fiscal periods succeeding the next fiscal period;

(b) A capital program consisting of proposed capital projects for at least the two fiscal periods succeeding the next fiscal period;

(c) A capital plan consisting of proposed capital spending for at least four fiscal periods succeeding the next fiscal period;

(d) A statement of the reason or purpose for a project;

(e) Verification that a project is consistent with the provisions set forth in chapter 36.70A RCW;

(f) A statement about the proposed site, size, and estimated life of the project, if applicable;

(g) Estimated total project cost;

(h) Estimated total project cost for each phase of the project as defined by the office of financial management;

(i) Estimated ensuing biennium costs;

(j) Estimated costs beyond the ensuing biennium;

(k) Estimated construction start and completion dates;

(l) Source and type of funds proposed;

(m) Such other information bearing upon capital projects as the governor deems to be useful;

(n) Standard terms, including a standard and uniform definition of maintenance for all capital projects;

(o) Such other information as the legislature may direct by law or concurrent resolution.

For purposes of this subsection (3), the term "capital project" shall be defined subsequent to the analysis,

findings, and recommendations of a joint committee comprised of representatives from the house capital appropriations committee, senate ways and means committee, legislative transportation committee, legislative evaluation and accountability program committee, and office of financial management.

(4) No change affecting the comparability of agency or program information relating to expenditures, revenues, workload, performance and personnel shall be made in the format of any budget document or report presented to the legislature under this section or RCW 43.88.160(1) relative to the format of the budget document or report which was presented to the previous regular session of the legislature during an odd-numbered year without prior legislative concurrence. Prior legislative concurrence shall consist of (a) a favorable majority vote on the proposal by the standing committees on ways and means of both houses if the legislature is in session or (b) a favorable majority vote on the proposal by members of the legislative evaluation and accountability program committee if the legislature is not in session. [1991 c 358 § 1; 1991 c 284 § 1; 1990 c 115 § 1. Prior: 1989 c 311 § 3; 1989 c 11 § 18; 1987 c 502 § 2; prior: 1986 c 215 § 3; 1986 c 112 § 1; 1984 c 138 § 7; 1981 c 270 § 3; 1980 c 87 § 26; 1977 ex.s. c 247 § 1; 1973 1st ex.s. c 100 § 3; 1965 c 8 § 43.88.030; prior: 1959 c 328 § 3.]

Reviser's note: This section was amended by 1991 c 284 § 1 and by 1991 c 358 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1991 c 358: "This act shall take effect April 1, 1992." [1991 c 358 § 8.]

Severability—1989 c 11: See note following RCW 9A.56.220.

43.88.031 Capital appropriation bill—Estimated general fund debt service costs. A capital appropriation bill shall include the estimated general fund debt service costs associated with new capital appropriations contained in that bill for the biennia in which the appropriations occur and for the succeeding two biennia. [1991 c 284 § 2.]

43.88.110 Expenditure programs—Allotments—Reserves. (Effective until April 1, 1992.) This section sets forth the expenditure programs and the allotment and reserve procedures to be followed by the executive branch for public funds. Allotments of an appropriation for any fiscal period shall conform to the terms, limits, or conditions of the appropriation.

(1) The director of financial management shall provide all agencies with a complete set of instructions for preparing a statement of proposed expenditures at least thirty days before the beginning of a fiscal period. The set of instructions need not include specific appropriation amounts for the agency.

(2) Within forty-five days after the beginning of the fiscal period or within forty-five days after the governor signs the omnibus biennial appropriations act, whichever is later, all agencies shall submit to the governor a statement of proposed expenditures at such times and in such form as may be required by the governor. If at any

time during the fiscal period the governor projects a cash deficit as defined by RCW 43.88.050, the governor shall make across-the-board reductions in allotments so as to prevent a cash deficit, unless the legislature has directed the liquidation of the cash deficit over one or more fiscal periods. Except for the legislative and judicial branches and other agencies headed by elective officials, the governor shall review the statement of proposed expenditures for reasonableness and conformance with legislative intent. Once the governor approves the statements of proposed expenditures, further revisions shall be made only at the beginning of the second fiscal year and must be initiated by the governor. However, changes in appropriation level authorized by the legislature, changes required by across-the-board reductions mandated by the governor, changes caused by executive increases to spending authority, and changes caused by executive decreases to spending authority for failure to comply with the provisions of chapter 36.70A RCW may require additional revisions. Revisions shall not be made retroactively. Revisions caused by executive increases to spending authority shall not be made after June 30, 1987. However, the governor may assign to a reserve status any portion of an agency appropriation withheld as part of across-the-board reductions made by the governor and any portion of an agency appropriation conditioned on a contingent event by the appropriations act. The governor may remove these amounts from reserve status if the across-the-board reductions are subsequently modified or if the contingent event occurs. The director of financial management shall enter approved statements of proposed expenditures into the state budgeting, accounting, and reporting system within forty-five days after receipt of the proposed statements from the agencies. If an agency or the director of financial management is unable to meet these requirements, the director of financial management shall provide a timely explanation in writing to the legislative fiscal committees.

(3) It is expressly provided that all agencies shall be required to maintain accounting records and to report thereon in the manner prescribed in this chapter and under the regulations issued pursuant to this chapter. Within ninety days of the end of the fiscal year, all agencies shall submit to the director of financial management their final adjustments to close their books for the fiscal year. Prior to submitting fiscal data, written or oral, to committees of the legislature, it is the responsibility of the agency submitting the data to reconcile it with the budget and accounting data reported by the agency to the director of financial management. The director of financial management shall monitor agency expenditures against the approved statement of proposed expenditures and shall provide the legislature with quarterly explanations of major variances.

(4) The director of financial management may exempt certain public funds from the allotment controls established under this chapter if it is not practical or necessary to allot the funds. Allotment control exemptions expire at the end of the fiscal biennium for which they are granted. The director of financial management shall

report any exemptions granted under this subsection to the legislative fiscal committees. [1991 1st sp.s. c 32 § 27; 1987 c 502 § 5; 1986 c 215 § 4; 1984 c 138 § 8; 1983 1st ex.s. c 47 § 1; 1982 2nd ex.s. c 15 § 1; 1981 c 270 § 5; 1979 c 151 § 138; 1975 1st ex.s. c 293 § 6; 1965 c 8 § 43.88.110. Prior: 1959 c 328 § 11.]

Section headings not law—1991 1st sp.s. c 32: See RCW 36.70A.902.

Severability—1982 2nd ex.s. c 15: "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." [1982 2nd ex.s. c 15 § 5.]

Effective date—**Severability**—1981 c 270: See notes following RCW 43.88.010.

Exception: RCW 43.88.265.

43.88.110 Expenditure programs—Allotments—Reserves—Monitor capital appropriations. (Effective April 1, 1992.) This section sets forth the expenditure programs and the allotment and reserve procedures to be followed by the executive branch for public funds.

(1) Allotments of an appropriation for any fiscal period shall conform to the terms, limits, or conditions of the appropriation.

(2) The director of financial management shall provide all agencies with a complete set of operating and capital instructions for preparing a statement of proposed expenditures at least thirty days before the beginning of a fiscal period. The set of instructions need not include specific appropriation amounts for the agency.

(3) Within forty-five days after the beginning of the fiscal period or within forty-five days after the governor signs the omnibus biennial appropriations act, whichever is later, all agencies shall submit to the governor a statement of proposed expenditures at such times and in such form as may be required by the governor.

(4) The office of financial management shall develop a method for monitoring capital appropriations and expenditures that will capture at least the following elements:

(a) Appropriations made for capital projects including transportation projects;

(b) Estimates of total project costs including past, current, ensuing, and future biennial costs;

(c) Comparisons of actual costs to estimated costs;

(d) Comparisons of estimated construction start and completion dates with actual dates;

(e) Documentation of fund shifts between projects.

This data may be incorporated into the existing accounting system or into a separate project management system, as deemed appropriate by the office of financial management.

(5) If at any time during the fiscal period the governor projects a cash deficit in a particular fund or account as defined by RCW 43.88.050, the governor shall make across-the-board reductions in allotments for that particular fund or account so as to prevent a cash deficit, unless the legislature has directed the liquidation of the cash deficit over one or more fiscal periods. Except for the legislative and judicial branches and other agencies headed by elective officials, the governor shall review the statement of proposed operating expenditures

for reasonableness and conformance with legislative intent. Once the governor approves the statements of proposed operating expenditures, further revisions shall be made only at the beginning of the second fiscal year and must be initiated by the governor. However, changes in appropriation level authorized by the legislature, changes required by across-the-board reductions mandated by the governor, changes caused by executive increases to spending authority, and changes caused by executive decreases to spending authority for failure to comply with the provisions of chapter 36.70A RCW may require additional revisions. Revisions shall not be made retroactively. Revisions caused by executive increases to spending authority shall not be made after June 30, 1987. However, the governor may assign to a reserve status any portion of an agency appropriation withheld as part of across-the-board reductions made by the governor and any portion of an agency appropriation conditioned on a contingent event by the appropriations act. The governor may remove these amounts from reserve status if the across-the-board reductions are subsequently modified or if the contingent event occurs. The director of financial management shall enter approved statements of proposed expenditures into the state budgeting, accounting, and reporting system within forty-five days after receipt of the proposed statements from the agencies. If an agency or the director of financial management is unable to meet these requirements, the director of financial management shall provide a timely explanation in writing to the legislative fiscal committees.

(6) It is expressly provided that all agencies shall be required to maintain accounting records and to report thereon in the manner prescribed in this chapter and under the regulations issued pursuant to this chapter. Within ninety days of the end of the fiscal year, all agencies shall submit to the director of financial management their final adjustments to close their books for the fiscal year. Prior to submitting fiscal data, written or oral, to committees of the legislature, it is the responsibility of the agency submitting the data to reconcile it with the budget and accounting data reported by the agency to the director of financial management.

(7) The director of financial management shall monitor agency operating expenditures against the approved statement of proposed expenditures and shall provide the legislature with quarterly explanations of major variances.

(8) The director of financial management may exempt certain public funds from the allotment controls established under this chapter if it is not practical or necessary to allot the funds. Allotment control exemptions expire at the end of the fiscal biennium for which they are granted. The director of financial management shall report any exemptions granted under this subsection to the legislative fiscal committees. [1991 1st sp.s. c 32 § 27; 1991 c 358 § 2; 1987 c 502 § 5; 1986 c 215 § 4; 1984 c 138 § 8; 1983 1st ex.s. c 47 § 1; 1982 2nd ex.s. c 15 § 1; 1981 c 270 § 5; 1979 c 151 § 138; 1975 1st ex.s. c 293 § 6; 1965 c 8 § 43.88.110. Prior: 1959 c 328 § 11.]

Reviser's note: This section was amended by 1991 1st sp.s. c 32 § 27 and by 1991 c 358 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Section headings not law—1991 1st sp.s. c 32: See RCW 36.70A.902.

Effective date—1991 c 358: See note following RCW 43.88.030.

Severability—1982 2nd ex.s. c 15: "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." [1982 2nd ex.s. c 15 § 5.]

Effective date—Severability—1981 c 270: See notes following RCW 43.88.010.

Exception: RCW 43.88.265.

43.88.120 Revenue estimates. (Effective April 1, 1992.) Each agency engaged in the collection of revenues shall prepare estimated revenues and estimated receipts for the current and ensuing biennium and shall submit the estimates to the director of financial management and the director of revenue at times and in the form specified by the directors, along with any other information which the directors may request. For those agencies required to develop six-year programs and financial plans under RCW 44.40.070, six-year revenue estimates shall be submitted to the director of financial management and the legislative transportation committee unless the responsibility for reporting these revenue estimates is assumed elsewhere.

A copy of such revenue estimates shall be simultaneously submitted to the economic and revenue forecast work group when required by the office of the economic and revenue forecast council. [1991 c 358 § 3; 1987 c 502 § 6; 1984 c 138 § 10; 1981 c 270 § 8; 1973 1st ex.s. c 100 § 7; 1965 c 8 § 43.88.120. Prior: 1959 c 328 § 12.]

Effective date—1991 c 358: See note following RCW 43.88.030.

Effective date—Severability—1981 c 270: See notes following RCW 43.88.010.

43.88.122 Transportation agency revenue forecasts—Variances. (Effective April 1, 1992.) Where there are variances of revenue forecasts between the office of financial management and the interagency revenue task force, for those transportation agencies that are required to develop plans under RCW 44.40.070, the office of financial management shall submit (1) a reconciliation of the differences between the revenue forecasts and (2) the assumptions used by the office of financial management to the legislative transportation committee. [1991 c 358 § 7.]

Effective date—1991 c 358: See note following RCW 43.88.030.

43.88.150 Priority of expenditures—Appropriated and nonappropriated funds—Matching funds, disburse state moneys proportionally. (1) For those agencies that make expenditures from both appropriated and nonappropriated funds for the same purpose, the governor shall direct such agencies to charge their expenditures in such ratio, as between appropriated and nonappropriated funds, as will conserve appropriated funds.

(2) Unless otherwise provided by law, if state moneys are appropriated for a capital project and matching

funds or other contributions are required as a condition of the receipt of the state moneys, the state moneys shall be disbursed in proportion to and only to the extent that the matching funds or other contributions have been received and are available for expenditure.

(3) The office of financial management shall adopt guidelines for the implementation of this section. The guidelines may account for federal matching requirements or other requirements to spend other moneys in a particular manner. [1991 c 284 § 3; 1981 c 270 § 10; 1965 c 8 § 43.88.150. Prior: 1959 c 328 § 15.]

Effective date—Severability—1981 c 270: See notes following RCW 43.88.010.

43.88.160 Fiscal management—Powers and duties of officers and agencies. (Effective April 1, 1992.) This section sets forth the major fiscal duties and responsibilities of officers and agencies of the executive branch. The regulations issued by the governor pursuant to this chapter shall provide for a comprehensive, orderly basis for fiscal management and control, including efficient accounting and reporting therefor, for the executive branch of the state government and may include, in addition, such requirements as will generally promote more efficient public management in the state.

(1) Governor; director of financial management. The governor, through the director of financial management, shall devise and supervise a modern and complete accounting system for each agency to the end that all revenues, expenditures, receipts, disbursements, resources, and obligations of the state shall be properly and systematically accounted for. The accounting system shall include the development of accurate, timely records and reports of all financial affairs of the state. The system shall also provide for central accounts in the office of financial management at the level of detail deemed necessary by the director to perform central financial management. The director of financial management shall adopt and periodically update an accounting procedures manual. Any agency maintaining its own accounting and reporting system shall comply with the updated accounting procedures manual and the rules of the director adopted under this chapter. An agency may receive a waiver from complying with this requirement if the waiver is approved by the director. Waivers expire at the end of the fiscal biennium for which they are granted. The director shall forward notice of waivers granted to the appropriate legislative fiscal committees. The director of financial management may require such financial, statistical, and other reports as the director deems necessary from all agencies covering any period.

(2) The director of financial management is responsible for quarterly reporting of primary operating budget drivers such as applicable workloads, caseload estimates, and appropriate unit cost data. These reports shall be transmitted to the legislative fiscal committees or by electronic means to the legislative evaluation and accountability program committee. Quarterly reports shall include actual monthly data and the variance between actual and estimated data to date. The reports shall also

include estimates of these items for the remainder of the budget period.

(3) The director of financial management shall report at least annually to the appropriate legislative committees regarding the status of all appropriated capital projects, including transportation projects, showing significant cost overruns or underruns. If funds are shifted from one project to another, the office of financial management shall also reflect this in the annual variance report. Once a project is complete, the report shall provide a final summary showing estimated start and completion dates of each project phase compared to actual dates, estimated costs of each project phase compared to actual costs, and whether or not there are any outstanding liabilities or unsettled claims at the time of completion.

(4) In addition, the director of financial management, as agent of the governor, shall:

(a) Make surveys and analyses of agencies with the object of determining better methods and increased effectiveness in the use of manpower and materials; and the director shall authorize expenditures for employee training to the end that the state may benefit from training facilities made available to state employees;

(b) Report to the governor with regard to duplication of effort or lack of coordination among agencies;

(c) Review any pay and classification plans, and changes thereunder, developed by any agency for their fiscal impact: PROVIDED, That none of the provisions of this subsection shall affect merit systems of personnel management now existing or hereafter established by statute relating to the fixing of qualifications requirements for recruitment, appointment, or promotion of employees of any agency. The director shall advise and confer with agencies including appropriate standing committees of the legislature as may be designated by the speaker of the house and the president of the senate regarding the fiscal impact of such plans and may amend or alter said plans, except that for the following agencies no amendment or alteration of said plans may be made without the approval of the agency concerned: Agencies headed by elective officials;

(d) Fix the number and classes of positions or authorized man years of employment for each agency and during the fiscal period amend the determinations previously fixed by the director except that the director shall not be empowered to fix said number or said classes for the following: Agencies headed by elective officials;

(e) Provide for transfers and repayments between the budget stabilization account and the general fund as directed by appropriation and RCW 43.88.525 through 43.88.540;

(f) Promulgate regulations to effectuate provisions contained in subsections (a) through (e) hereof.

(5) The treasurer shall:

(a) Receive, keep, and disburse all public funds of the state not expressly required by law to be received, kept, and disbursed by some other persons: PROVIDED, That this subsection shall not apply to those public funds of

the institutions of higher learning which are not subject to appropriation;

(b) Disburse public funds under the treasurer's supervision or custody by warrant or check;

(c) Keep a correct and current account of all moneys received and disbursed by the treasurer, classified by fund or account;

(d) Perform such other duties as may be required by law or by regulations issued pursuant to this law.

It shall be unlawful for the treasurer to issue any warrant or check for public funds in the treasury except upon forms duly prescribed by the director of financial management. Said forms shall provide for authentication and certification by the agency head or the agency head's designee that the services have been rendered or the materials have been furnished; or, in the case of loans or grants, that the loans or grants are authorized by law; or, in the case of payments for periodic maintenance services to be performed on state owned equipment, that a written contract for such periodic maintenance services is currently in effect and copies thereof are on file with the office of financial management; and the treasurer shall not be liable under the treasurer's surety bond for erroneous or improper payments so made: PROVIDED, That when services are lawfully paid for in advance of full performance by any private individual or business entity other than as provided for by RCW 42.24.035, such individual or entity other than central stores rendering such services shall make a cash deposit or furnish surety bond coverage to the state as shall be fixed in an amount by law, or if not fixed by law, then in such amounts as shall be fixed by the director of the department of general administration but in no case shall such required cash deposit or surety bond be less than an amount which will fully indemnify the state against any and all losses on account of breach of promise to fully perform such services: AND PROVIDED FURTHER, That no payments shall be made in advance for any equipment maintenance services to be performed more than three months after such payment. Any such bond so furnished shall be conditioned that the person, firm or corporation receiving the advance payment will apply it toward performance of the contract. The responsibility for recovery of erroneous or improper payments made under this section shall lie with the agency head or the agency head's designee in accordance with regulations issued pursuant to this chapter. Nothing in this section shall be construed to permit a public body to advance funds to a private service provider pursuant to a grant or loan before services have been rendered or material furnished.

(6) The state auditor shall:

(a) Report to the legislature the results of current post audits that have been made of the financial transactions of each agency; to this end the auditor may, in the auditor's discretion, examine the books and accounts of any agency, official or employee charged with the receipt, custody or safekeeping of public funds. The current post audit of each agency may include a section on recommendations to the legislature as provided in (c) of this subsection.

(b) Give information to the legislature, whenever required, upon any subject relating to the financial affairs of the state.

(c) Make the auditor's official report on or before the thirty-first of December which precedes the meeting of the legislature. The report shall be for the last complete fiscal period and shall include at least the following:

Determinations as to whether agencies, in making expenditures, complied with the laws of this state: **PROVIDED**, That nothing in this section may be construed to grant the state auditor the right to perform performance audits. A performance audit for the purpose of this section is the examination of the effectiveness of the administration, its efficiency, and its adequacy in terms of the programs of departments or agencies as previously approved by the legislature. The authority and responsibility to conduct such an examination shall be vested in the legislative budget committee as prescribed in RCW 44.28.085.

(d) Be empowered to take exception to specific expenditures that have been incurred by any agency or to take exception to other practices related in any way to the agency's financial transactions and to cause such exceptions to be made a matter of public record, including disclosure to the agency concerned and to the director of financial management. It shall be the duty of the director of financial management to cause corrective action to be taken promptly, such action to include, as appropriate, the withholding of funds as provided in RCW 43.88.110.

(e) Promptly report any irregularities to the attorney general.

(7) The legislative budget committee may:

(a) Make post audits of the financial transactions of any agency and management surveys and program reviews as provided for in RCW 44.28.085. To this end the committee may in its discretion examine the books, accounts, and other records of any agency, official, or employee.

(b) Give information to the legislature or any legislative committee whenever required upon any subject relating to the performance and management of state agencies.

(c) Make a report to the legislature which shall include at least the following:

(i) Determinations as to the extent to which agencies in making expenditures have complied with the will of the legislature and in this connection, may take exception to specific expenditures or financial practices of any agencies; and

(ii) Such plans as it deems expedient for the support of the state's credit, for lessening expenditures, for promoting frugality and economy in agency affairs and generally for an improved level of fiscal management. [1991 c 358 § 4. Prior: 1987 c 505 § 36; 1987 c 436 § 1; 1986 c 215 § 5; 1982 c 10 § 11; prior: 1981 c 280 § 7; 1981 c 270 § 11; 1979 c 151 § 139; 1975 1st ex.s. c 293 § 8; 1975 c 40 § 11; 1973 c 104 § 1; 1971 ex.s. c 170 § 4; 1967 ex.s. c 8 § 49; 1965 c 8 § 43.88.160; prior: 1959 c 328 § 16.]

Effective date—1991 c 358: See note following RCW 43.88.030.

Severability—1982 c 10: See note following RCW 6.13.080.

Effective date—**Severability**—1981 c 280: See notes following RCW 43.88.520.

Effective date—**Severability**—1981 c 270: See notes following RCW 43.88.010.

Severability—1971 ex.s. c 170: See note following RCW 43.09.050.

Director of financial management: Chapter 43.41 RCW.

Legislative budget committee: Chapter 44.28 RCW.

Post-audit: RCW 43.09.290 through 43.09.330.

Powers and duties of director of general administration as to official bonds: RCW 43.19.540.

State auditor, duties: Chapter 43.09 RCW.

State treasurer, duties: Chapter 43.08 RCW.

43.88.175 Credit reporting agencies—State agency use. State agencies may report receivables to credit reporting agencies whenever the agency determines that such reporting would be cost-effective and does not violate confidentiality or other legal requirements. Within thirty-five days after satisfaction of a debt reported to a credit reporting agency, the state agency reporting the debt shall notify the credit reporting agency that the debt has been satisfied. [1991 c 85 § 1; 1989 c 100 § 1.]

43.88.195 Establishment of accounts or funds outside treasury without permission of director of financial management prohibited. After August 11, 1969, no state agency, state institution, state institution of higher education, which shall include all state universities, regional universities, The Evergreen State College, and community colleges, shall establish any new accounts or funds which are to be located outside of the state treasury: **PROVIDED**, That the office of financial management shall be authorized to grant permission for the establishment of such an account or fund outside of the state treasury only when the requesting agency presents compelling reasons of economy and efficiency which could not be achieved by placing such funds in the state treasury. When the director of financial management authorizes the creation of such fund or account, the director shall forthwith give written notice of the fact to the standing committees on ways and means of the house and senate: **PROVIDED FURTHER**, That the office of financial management may grant permission for the establishment of accounts outside of the state treasury for the purposes of RCW 39.35C.120. [1991 c 201 § 19; 1979 c 151 § 140; 1977 ex.s. c 169 § 109; 1975 1st ex.s. c 293 § 9; 1969 ex.s. c 248 § 1.]

Captions not law—**Severability**—1991 c 201: See RCW 39.35C.900 and 39.35C.901.

43.88.525 Budget stabilization account—Deposits—Request for transfers to account. A budget stabilization account is hereby created as an account in the state treasury for the purposes set forth in RCW 43.88.520 through 43.88.540. There shall be deposited into the stabilization account the revenues described in RCW 43.88.530 and such other amounts as the legislature may from time to time direct to be deposited in the account. The governor's biennial budget document shall contain a request for necessary transfers from the general fund to

the budget stabilization account of those revenues identified in RCW 43.88.530. [1991 1st sp.s. c 13 § 13; 1985 c 57 § 52; 1981 c 280 § 2.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

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

Effective date—Severability—1981 c 280: See notes following RCW 43.88.520.

Chapter 43.98A

ACQUISITION OF HABITAT CONSERVATION AND OUTDOOR RECREATION LANDS

Sections

43.98A.005	Findings.
43.98A.010	Definitions.
43.98A.020	Habitat conservation account.
43.98A.030	Allocation and use of moneys—Grants.
43.98A.040	Habitat conservation account—Distribution and use of moneys.
43.98A.050	Outdoor recreation account—Distribution and use of moneys.
43.98A.060	Habitat conservation account—Acquisition policies and priorities.
43.98A.070	Acquisition and development priorities—Generally.
43.98A.080	Recommended project list—Committee authority to obligate funds—Legislature's authority.
43.98A.090	Condemnation.
43.98A.100	Report to governor and standing committees.
43.98A.900	Severability—1990 1st ex.s. c 14.

43.98A.005 Findings. The legislature finds:

(1) That Washington possesses an abundance of natural wealth in the form of forests, mountains, wildlife, waters, and other natural resources, all of which help to provide an unparalleled diversity of outdoor recreation opportunities and a quality of life unmatched in this nation;

(2) That as the state's population grows, the demand on these resources is growing too, placing greater stress on today's already overcrowded public recreational lands and facilities, and resulting in a significant loss of wildlife habitat and lands of unique natural value;

(3) That public acquisition and development programs have not kept pace with the state's expanding population;

(4) That private investment and employment opportunities in general and the tourist industry in particular are dependent upon the continued availability of recreational opportunities and our state's unique natural environment;

(5) That if current trends continue, some wildlife species and rare ecosystems will be lost in the state forever and public recreational lands will not be adequate to meet public demands;

(6) That there is accordingly a need for the people of the state to reserve certain areas of the state, in rural as well as urban settings, for the benefit of present and future generations.

It is therefore the policy of the state to acquire as soon as possible the most significant lands for wildlife conservation and outdoor recreation purposes before they are converted to other uses, and to develop existing

public recreational land and facilities to meet the needs of present and future generations. [1990 1st ex.s. c 14 § 1.]

43.98A.010 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Acquisition" means the purchase on a willing seller basis of fee or less than fee interests in real property. These interests include, but are not limited to, options, rights of first refusal, conservation easements, leases, and mineral rights.

(2) "Committee" means the interagency committee for outdoor recreation.

(3) "Critical habitat" means lands important for the protection, management, or public enjoyment of certain wildlife species or groups of species, including, but not limited to, wintering range for deer, elk, and other species, waterfowl and upland bird habitat, fish habitat, and habitat for endangered, threatened, or sensitive species.

(4) "Local agencies" means a city, county, town, tribe, special purpose district, port district, or other political subdivision of the state providing services to less than the entire state.

(5) "Natural areas" means areas that have, to a significant degree, retained their natural character and are important in preserving rare or vanishing flora, fauna, geological, natural historical, or similar features of scientific or educational value.

(6) "Special needs populations" means physically restricted people or people of limited means.

(7) "Trails" means public ways constructed for and open to pedestrians, equestrians, or bicyclists, or any combination thereof, other than a sidewalk constructed as a part of a city street or county road for exclusive use of pedestrians.

(8) "Urban wildlife habitat" means lands that provide habitat important to wildlife in proximity to a metropolitan area.

(9) "Water access" means boat or foot access to marine waters, lakes, rivers, or streams. [1990 1st ex.s. c 14 § 2.]

43.98A.020 Habitat conservation account. The habitat conservation account is established in the state treasury. The committee shall administer the account in accordance with chapter 43.99 RCW and this chapter, and shall hold it separate and apart from all other money, funds, and accounts of the committee. [1990 1st ex.s. c 14 § 3.]

43.98A.030 Allocation and use of moneys—Grants. (1) Moneys appropriated for this chapter shall be divided equally between the habitat conservation and outdoor recreation accounts and shall be used exclusively for the purposes specified in this chapter.

(2) Moneys deposited in these accounts shall be invested as authorized for other state funds, and any earnings on them shall be credited to the respective account.

(3) All moneys deposited in the habitat conservation and outdoor recreation accounts shall be allocated under RCW 43.98A.040 and 43.98A.050 as grants to state or

local agencies for acquisition, development, and renovation within the jurisdiction of those agencies, subject to legislative appropriation. The committee may use or permit the use of any funds appropriated for this chapter as matching funds where federal, local, or other funds are made available for projects within the purposes of this chapter.

(4) Projects receiving grants under this chapter that are developed or otherwise accessible for public recreational uses shall be available to the public on a nondiscriminatory basis.

(5) The committee may make grants to an eligible project from both the habitat conservation and outdoor recreation accounts and any one or more of the applicable categories under such accounts described in RCW 43.98A.040 and 43.98A.050. [1990 1st ex.s. c 14 § 4.]

Outdoor recreation account: Chapter 43.99 RCW.

43.98A.040 Habitat conservation account—Distribution and use of moneys. (1) Moneys appropriated for this chapter to the habitat conservation account shall be distributed in the following way:

(a) Not less than thirty-five percent for the acquisition and development of critical habitat;

(b) Not less than twenty percent for the acquisition and development of natural areas;

(c) Not less than fifteen percent for the acquisition and development of urban wildlife habitat; and

(d) The remaining amount shall be considered unallocated and shall be used by the committee to fund high priority acquisition and development needs for critical habitat, natural areas, and urban wildlife habitat.

(2) In distributing these funds, the committee retains discretion to meet the most pressing needs for critical habitat, natural areas, and urban wildlife habitat, and is not required to meet the percentages described in subsection (1) of this section in any one biennium.

(3) Only state agencies may apply for acquisition and development funds for critical habitat and natural areas projects under subsection (1) (a), (b), and (d) of this section.

(4) State and local agencies may apply for acquisition and development funds for urban wildlife habitat projects under subsection (1) (c) and (d) of this section. [1990 1st ex.s. c 14 § 5.]

43.98A.050 Outdoor recreation account—Distribution and use of moneys. (1) Moneys appropriated for this chapter to the outdoor recreation account shall be distributed in the following way:

(a) Not less than twenty-five percent to the state parks and recreation commission for the acquisition and development of state parks, with at least seventy-five percent of this money for acquisition costs;

(b) Not less than twenty-five percent for the acquisition, development, and renovation of local parks, with at least fifty percent of this money for acquisition costs;

(c) Not less than fifteen percent for the acquisition and development of trails;

(d) Not less than ten percent for the acquisition and development of water access sites, with at least seventy-five percent of this money for acquisition costs; and

(e) The remaining amount shall be considered unallocated and shall be distributed by the committee to state and local agencies to fund high priority acquisition and development needs for parks, trails, and water access sites.

(2) In distributing these funds, the committee retains discretion to meet the most pressing needs for state and local parks, trails, and water access sites, and is not required to meet the percentages described in subsection (1) of this section in any one biennium.

(3) Only local agencies may apply for acquisition, development, or renovation funds for local parks under subsection (1)(b) of this section.

(4) State and local agencies may apply for funds for trails under subsection (1)(c) of this section.

(5) State and local agencies may apply for funds for water access sites under subsection (1)(d) of this section. [1990 1st ex.s. c 14 § 6.]

43.98A.060 Habitat conservation account—Acquisition policies and priorities. (1) The committee may adopt rules establishing acquisition policies and priorities for distributions from the habitat conservation account.

(2) Moneys appropriated for this chapter may not be used by the committee to fund additional staff positions or other overhead expenses, or by a state, regional, or local agency to fund operation and maintenance of areas acquired under this chapter.

(3) Moneys appropriated for this chapter may be used for costs incidental to acquisition, including, but not limited to, surveying expenses, fencing, and signing.

(4) The committee may not approve a local project where the local agency share is less than the amount to be awarded from the habitat conservation account.

(5) In determining acquisition priorities with respect to the habitat conservation account, the committee shall consider, at a minimum, the following criteria:

(a) For critical habitat and natural areas proposals:

- (i) Community support;
- (ii) Immediacy of threat to the site;
- (iii) Uniqueness of the site;
- (iv) Diversity of species using the site;
- (v) Quality of the habitat;
- (vi) Long-term viability of the site;
- (vii) Presence of endangered, threatened, or sensitive species;

- (viii) Enhancement of existing public property;
- (ix) Consistency with a local land use plan, or a regional or state-wide recreational or resource plan; and
- (x) Educational and scientific value of the site.

(b) For urban wildlife habitat proposals, in addition to the criteria of (a) of this subsection:

- (i) Population of, and distance from, the nearest urban area;
- (ii) Proximity to other wildlife habitat;
- (iii) Potential for public use; and
- (iv) Potential for use by special needs populations.

(6) Before October 1st of each even-numbered year, the committee shall recommend to the governor a prioritized list of state agency projects to be funded under RCW 43.98A.040(1) (a), (b), and (c). The governor may remove projects from the list recommended by the committee and shall submit this amended list in the capital budget request to the legislature. The list shall include, but not be limited to, a description of each project; and shall describe for each project any anticipated restrictions upon recreational activities allowed prior to the project.

(7) Before October 1st of each year, the committee shall recommend to the governor a prioritized list of all local projects to be funded under RCW 43.98A.040(1)(c). The governor may remove projects from the list recommended by the committee and shall submit this amended list in the capital budget request to the legislature. The list shall include, but not be limited to, a description of each project and any particular match requirement, and describe for each project any anticipated restrictions upon recreational activities allowed prior to the project. [1990 1st ex.s. c 14 § 7.]

43.98A.070 Acquisition and development priorities—Generally. (1) In determining which state parks proposals and local parks proposals to fund, the committee shall use existing policies and priorities.

(2) Moneys appropriated for this chapter may not be used by the committee to fund additional staff or other overhead expenses, or by a state, regional, or local agency to fund operation and maintenance of areas acquired under this chapter.

(3) Moneys appropriated for this chapter may be used for costs incidental to acquisition, including, but not limited to, surveying expenses, fencing, and signing.

(4) The committee may not approve a project of a local agency where the share contributed by the local agency is less than the amount to be awarded from the outdoor recreation account.

(5) The committee may adopt rules establishing acquisition policies and priorities for the acquisition and development of trails and water access sites to be financed from moneys in the outdoor recreation account.

(6) In determining the acquisition and development priorities, the committee shall consider, at a minimum, the following criteria:

(a) For trails proposals:

- (i) Community support;
- (ii) Immediacy of threat to the site;
- (iii) Linkage between communities;
- (iv) Linkage between trails;
- (v) Existing or potential usage;
- (vi) Consistency with an existing local land use plan or a regional or state-wide recreational or resource plan;
- (vii) Availability of water access or views;
- (viii) Enhancement of wildlife habitat; and
- (ix) Scenic values of the site.

(b) For water access proposals:

- (i) Community support;
- (ii) Distance from similar water access opportunities;
- (iii) Immediacy of threat to the site;
- (iv) Diversity of possible recreational uses; and
- (v) Public demand in the area.

(7) Before October 1st of each even-numbered year, the committee shall recommend to the governor a prioritized list of state agency projects to be funded under RCW 43.98A.050(1) (a), (c), and (d). The governor may remove projects from the list recommended by the committee and shall submit this amended list in the capital budget request to the legislature. The list shall include, but not be limited to, a description of each project; and shall describe for each project any anticipated restrictions upon recreational activities allowed prior to the project.

(8) Before October 1st of each year, the committee shall recommend to the governor a prioritized list of all local projects to be funded under RCW 43.98A.050(1) (b), (c), and (d) of this act. The governor may remove projects from the list recommended by the committee and shall submit this amended list in the capital budget request to the legislature. The list shall include, but not be limited to, a description of each project and any particular match requirement, and describe for each project any anticipated restrictions upon recreational activities allowed prior to the project. [1990 1st ex.s. c 14 § 8.]

43.98A.080 Recommended project list—Committee authority to obligate funds—Legislature's authority. The committee shall not sign contracts or otherwise financially obligate funds from the habitat conservation account or the outdoor recreation account as provided in this chapter before the legislature has appropriated funds for a specific list of projects. The legislature may remove projects from the list recommended by the governor. [1990 1st ex.s. c 14 § 9.]

43.98A.090 Condemnation. Moneys made available under this chapter for land acquisition shall not be used to acquire land through condemnation. [1990 1st ex.s. c 14 § 10.]

43.98A.100 Report to governor and standing committees. On or before November 1st of each odd-numbered year, the committee shall submit to the governor and the standing committees of the legislature dealing with fiscal affairs, fish and wildlife, and natural resources a report detailing the acquisitions and development projects funded under this chapter during the immediately preceding biennium. [1990 1st ex.s. c 14 § 11.]

43.98A.900 Severability—1990 1st ex.s. c 14. 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. [1990 1st ex.s. c 14 § 12.]

Chapter 43.99

MARINE RECREATION LAND—INTERAGENCY
COMMITTEE FOR OUTDOOR RECREATION

Sections

- 43.99.040 Marine fuel tax refund account—Moneys derived from tax on marine fuel—Refunding and placement in account—Exception.
- 43.99.060 Outdoor recreation account—Deposits.
- 43.99.070 Outdoor recreation account, motor vehicle fund—Transfers of moneys from marine fuel tax account.

43.99.040 Marine fuel tax refund account—Moneys derived from tax on marine fuel—Refunding and placement in account—Exception. There is created the marine fuel tax refund account in the state treasury. From time to time, but at least once each biennium, the director of licensing shall request the state treasurer to refund from the motor vehicle fund amounts which have been determined to be tax on marine fuel. The state treasurer shall refund such amounts and place them in the marine fuel tax refund account to be held for those entitled thereto pursuant to chapter 82.36 RCW and RCW 43.99.050, except that he shall not refund and place in the marine fuel tax refund account for any period for which a determination has been made pursuant to RCW 43.99.030 more than the greater of the following amounts: (1) An amount equal to two percent of all moneys paid to him as motor vehicle fuel tax for such period, (2) an amount necessary to meet all approved claims for refund of tax on marine fuel for such period. [1991 1st sp.s. c 13 § 42; 1985 c 57 § 53; 1979 c 158 § 110; 1965 c 5 § 4 (Initiative Measure No. 215, approved November 3, 1964).]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

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

43.99.060 Outdoor recreation account—Deposits. There is created the outdoor recreation account in the state treasury, in which shall be deposited all moneys received from the marine fuel tax refund account pursuant to RCW 43.99.070, the proceeds of the bond issue authorized by chapter 43.98 RCW, *RCW 43.31.620 and 43.31.740, and any moneys made available to the state of Washington by the federal government for outdoor recreation not specifically designated for another fund or agency.

Grants, gifts, or other financial assistance awarded or designated for a particular purpose, or proceeds received from public bodies as administrative cost contributions, may be received and, when appropriated by the legislature, may be expended in accordance with the general budget and accounting act. [1991 1st sp.s. c 13 § 52; 1985 c 57 § 54; 1967 ex.s. c 62 § 1; 1965 c 5 § 6 (Initiative Measure No. 215, approved November 3, 1964).]

***Reviser's note:** RCW 43.31.620 and 43.31.740 were decodified pursuant to 1985 c 466 § 75, effective June 30, 1985.

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

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

43.99.070 Outdoor recreation account, motor vehicle fund—Transfers of moneys from marine fuel tax account. Upon expiration of the time limited by RCW 82.36.330 for claiming of refunds of tax on marine fuel, the state of Washington shall succeed to the right to such refunds. From time to time, but at least once each biennium, the director of licensing, after taking into account past and anticipated claims for refunds from and deposits to the marine fuel tax refund account and the costs of carrying out the provisions of RCW 43.99.030, shall request the state treasurer to transfer an amount equal to the proportion of the moneys in the account representing the motor vehicle fuel tax rate under RCW 82.36.025 in effect on January 1, 1990, to the outdoor recreation account and the remainder to the motor vehicle fund. [1990 c 42 § 116; 1979 c 158 § 111; 1965 c 5 § 7 (Initiative Measure No. 215, approved November 3, 1964).]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Chapter 43.99C

HANDICAPPED FACILITIES BOND ISSUE

Sections

- 43.99C.040 Repealed.
- 43.99C.045 Administration of proceeds—Distribution—Transfer of fixed assets.

43.99C.040 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.99C.045 Administration of proceeds—Distribution—Transfer of fixed assets. Subject to legislative appropriation, all principal proceeds of the bonds and bond anticipation notes authorized in this chapter shall be administered by the state department of social and health services exclusively for the purposes specified in this chapter and for the payment of expenses incurred in connection with the sale and issuance of the bonds and bond anticipation notes.

In carrying out the purposes of this chapter all counties of the state shall be eligible to participate in the distribution of the bond proceeds. The share coming to each county shall be determined by a division among all counties according to the relation which the population of each county, as shown by the last federal or official state census, whichever is the later, bears to the total combined population of all counties, as shown by such census; except that, each county with a population of less than twelve thousand shall receive an aggregate amount of up to seventy-five thousand dollars if, through a procedure established in rule, the department has determined there is a demonstrated need and the share determined for such county is less than seventy-five thousand dollars. No single project in a county with a population of one million or more shall be eligible for more than fifteen percent of such county's total distribution of bond proceeds.

In carrying out the purposes specified in this chapter, the department may use or permit the use of the proceeds by direct expenditures, grants, or loans to any public body, including but not limited to grants to a public body as matching funds in any case where federal, local, or other funds are made available on a matching basis for purposes specified in this chapter.

In carrying out the purpose of this chapter, fixed assets acquired under this chapter, and no longer utilized by the program having custody of the assets, may be transferred to other public bodies either in the same county or another county. Prior to such transfer the department shall first determine if the assets can be used by another program as designated by the department of social and health services in RCW 43.99C.020. Such programs shall have priority in obtaining the assets to ensure the purpose of this chapter is carried out. [1991 c 363 § 121; 1989 c 265 § 1; 1980 c 136 § 1; 1979 ex.s. c 221 § 8.]

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

Appropriation—1980 c 136: "There is hereby appropriated to the department of social and health services from the 1979 handicapped facilities construction account in the general fund the sum of twenty-five million dollars for the purposes of chapter 43.99C RCW. This appropriation shall be limited by the conditions contained in section 2 of this act." [1980 c 136 § 3.] Section 2 of this act consists of the enactment of RCW 43.99C.047.

Severability—1980 c 136: "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." [1980 c 136 § 4.]

Severability—Referral to electorate—1979 ex.s. c 221: See notes following RCW 43.99C.010.

Chapter 43.99D

WATER SUPPLY FACILITIES—1979 BOND ISSUE

Sections

43.99D.025 Administration of proceeds—Use of funds.

43.99D.025 Administration of proceeds—Use of funds. The proceeds from the sale of the bonds deposited in the state and local improvements revolving account—water supply facilities of the general fund under the terms of this chapter shall be administered by the state department of health subject to legislative appropriation. The department may use or permit the use of any funds derived from the sale of bonds authorized under this chapter to accomplish the purpose for which the bonds are issued by direct expenditures and by grants or loans to public bodies, including grants to public bodies as matching funds in any case where federal, local, or other funds are made available on a matching basis for improvements within the purposes of this chapter. [1991 c 3 § 301; 1979 ex.s. c 258 § 4.]

Chapter 43.99E

WATER SUPPLY FACILITIES—1980 BOND ISSUE

Sections

43.99E.015 General obligation bonds—Authorized—Issuance, sale, terms—Appropriation required.

43.99E.025 Administration of proceeds.

43.99E.015 General obligation bonds—Authorized—Issuance, sale, terms—Appropriation required. For the purpose of providing funds for the planning, acquisition, construction, and improvement of water supply facilities within the state, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of sixty-five million dollars, or so much thereof as may be required, to finance the improvements defined in this chapter and all costs incidental thereto. These bonds shall be paid and discharged within thirty years of the date of issuance in accordance with Article VIII, section 1 of the state Constitution. No bonds authorized by this chapter may be offered for sale without prior legislative appropriation of the proceeds of the bonds to be sold. [1990 1st ex.s. c 15 § 8. Prior: 1989 1st ex.s. c 14 § 11; 1989 c 136 § 4; 1979 ex.s. c 234 § 2.]

Severability—1990 1st ex.s. c 15: See note following RCW 43.99H.010.

Severability—Effective dates—1989 1st ex.s. c 14: See RCW 43.99H.900 and 43.99H.901.

Intent—1989 c 136: See note following RCW 43.83A.020.

Referral to electorate—1979 ex.s. c 234: See note following RCW 43.99E.010.

43.99E.025 Administration of proceeds. The proceeds from the sale of the bonds deposited in the state and local improvements revolving account—water supply facilities of the general fund under the terms of this chapter shall be divided into two shares as follows:

(1) Seventy-five million dollars, or so much thereof as may be required, shall be used for domestic, municipal, and industrial water supply facilities; and

(2) Fifty million dollars, or so much thereof as may be required, shall be used for water supply facilities for agricultural use alone or in combination with fishery, recreational, or other beneficial uses of water.

The share of seventy-five million dollars shall be administered by the department of health and the share of fifty million dollars shall be administered by the department of ecology, subject to legislative appropriation. The administering departments may use or permit the use of any funds derived from the sale of bonds authorized under this chapter to accomplish the purpose for the issuance of the bonds by direct expenditures and by grants or loans to public bodies, including grants to public bodies as matching funds in any case where federal, local, or other funds are made available on a matching basis for improvements within the purposes of this chapter. [1991 c 3 § 302; 1979 ex.s. c 234 § 4.]

Referral to electorate—1979 ex.s. c 234: See note following RCW 43.99E.010.

Chapter 43.99F

WASTE DISPOSAL FACILITIES—1980 BOND
ISSUE

Sections

- 43.99F.020 General obligation bonds—Authorized—Issuance, sale, terms—Appropriation required.
43.99F.030 Deposit of proceeds in state and local improvements revolving account, Waste Disposal Facilities, 1980—Use.

43.99F.020 General obligation bonds—Authorized—Issuance, sale, terms—Appropriation required. For the purpose of providing funds to public bodies for the planning, design, acquisition, construction, and improvement of public waste disposal and management facilities, or for purposes of assisting a public body to obtain an ownership interest in waste disposal and management facilities and/or to defray a part of the payments made by a public body to a service provider under a service agreement entered into pursuant to RCW 70.150.060, in this state, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of three hundred thirty million dollars, or so much thereof as may be required, to finance the improvements defined in this chapter and all costs incidental thereto. The department may not use or permit the use of any funds derived from the sale of bonds authorized by this chapter for: (1) the support of a solid waste recycling activity or service in a locale if the department determines that the activity or service is reasonably available to persons within that locale from private enterprise; or (2) the construction of municipal wastewater facilities unless said facilities have been approved by a general purpose unit of local government in accordance with chapter 36.94 RCW, chapter 35.67 RCW, or RCW 56.08.020. These bonds shall be paid and discharged within thirty years of the date of issuance. No bonds authorized by this chapter shall be offered for sale without prior legislative appropriation of the proceeds of the bonds to be sold. [1990 1st ex.s. c 15 § 9. Prior: 1989 1st ex.s. c 14 § 12; 1989 c 136 § 6; 1987 c 436 § 2; 1980 c 159 § 2.]

Severability—1990 1st ex.s. c 15: See note following RCW 43.99H.010.

Severability—Effective dates—1989 1st ex.s. c 14: See RCW 43.99H.900 and 43.99H.901.

Intent—1989 c 136: See note following RCW 43.83A.020.

43.99F.030 Deposit of proceeds in state and local improvements revolving account, Waste Disposal Facilities, 1980—Use. The proceeds from the sale of bonds authorized by this chapter shall be deposited in the state and local improvements revolving account, Waste Disposal Facilities, 1980 hereby created in the state treasury and shall be used exclusively for the purpose specified in this chapter and for payment of the expenses incurred in the issuance and sale of the bonds. [1991 1st sp.s. c 13 § 44; 1985 c 57 § 56; 1980 c 159 § 3.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

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

Chapter 43.99H

FINANCING FOR CAPITAL AND OPERATING
APPROPRIATIONS—1989-1991 FISCAL
BIENNIUM

Sections

- 43.99H.010 1989-1991 fiscal biennium—General obligation bonds for capital and operating appropriations act.
43.99H.020 Conditions and limitations.
43.99H.030 Retirement of bonds.
43.99H.040 Retirement of bonds.
43.99H.060 Reimbursement of general fund.
43.99H.080 1989-1991 fiscal biennium general obligation bonds for capital and operating appropriations act—Additional means for payment of principal and interest.

43.99H.010 1989-1991 fiscal biennium—General obligation bonds for capital and operating appropriations act. The state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of one billion four hundred four million dollars, or so much thereof as may be required, to finance the projects described and authorized by the legislature in the capital and operating appropriations acts for the 1989-1991 fiscal biennium and subsequent fiscal biennia, and all costs incidental thereto, and to provide for reimbursement of bond-funded accounts from the 1987-1989 fiscal biennium.

Bonds authorized in this section shall be sold in such manner, at such time or times, in such amounts, and at such price as the state finance committee shall determine. No such bonds may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds. The state finance committee may obtain insurance, letters of credit, or other credit enhancements and may authorize the execution and delivery of agreements, promissory notes, and other obligations for the purpose of insuring the payment or enhancing the marketability of bonds authorized in this section. Promissory notes or other obligations issued pursuant to this section shall not constitute a debt or the contracting of indebtedness under any constitutional or statutory indebtedness limitation if their payment is conditioned upon the failure of the state to pay the principal of or interest on the bonds with respect to which the same relate.

The state finance committee shall consider the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued. [1990 1st ex.s. c 15 § 1; 1989 1st ex.s. c 14 § 1.]

Severability—1990 1st ex.s. c 15: "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." [1990 1st ex.s. c 15 § 14.]

43.99H.020 Conditions and limitations. Bonds issued under RCW 43.99H.010 are subject to the following conditions and limitations:

General obligation bonds of the state of Washington in the sum of one billion four hundred four million dollars, or so much thereof as may be required, shall be issued for the purposes described and authorized by the legislature in the capital and operating appropriations acts for the 1989–91 fiscal biennium and subsequent fiscal biennia, and to provide for the administrative cost of such projects, including costs of bond issuance and retirement, salaries and related costs of officials and employees of the state, costs of insurance or credit enhancement agreements, and other expenses incidental to the administration of capital projects, and to provide for reimbursement of bond-funded accounts from the 1987–89 fiscal biennium. Subject to such changes as may be required in the appropriations acts, the proceeds from the sale of the bonds issued for the purposes of this subsection shall be deposited in the state building construction account created by RCW 43.83.020 and transferred as follows:

(1) Thirty million dollars to the state and local improvements revolving account—waste disposal facilities, created by RCW 43.83A.030, to be used for the purposes described in RCW 43.83A.020;

(2) Five million three hundred thousand dollars to the salmon enhancement construction account created by *RCW 75.48.030;

(3) One hundred twenty million dollars to the state and local improvements revolving account—waste disposal facilities, 1980 created by RCW 43.99F.030, to be used for the purposes described in RCW 43.99F.020;

(4) Forty million dollars to the common school construction fund as referenced in RCW 28A.515.320.

(5) Three million two hundred thousand dollars to the state higher education construction account created by RCW 28B.10.851;

(6) Eight hundred five million dollars to the state building construction account created by RCW 43.83.020;

(7) Nine hundred fifty thousand dollars to the higher education reimbursable short-term bond account created by RCW 43.99G.020(6);

(8) Twenty-nine million seven hundred thirty thousand dollars to the outdoor recreation account created by RCW 43.99.060;

(9) Sixty million dollars to the state and local improvements revolving account—water supply facilities, created by RCW 43.99E.020 to be used for the purposes described in chapter 43.99E RCW;

(10) Four million three hundred thousand dollars to the state social and health services construction account created by RCW 43.83H.030;

(11) Two hundred fifty thousand dollars to the fisheries capital projects account created by RCW 43.83I.040;

(12) Four million nine hundred thousand dollars to the state facilities renewal account created by RCW 43.99G.020(5);

(13) Two million three hundred thousand dollars to the essential rail assistance account created by RCW 47.76.030;

(14) One million one hundred thousand dollars to the essential rail bank account hereby created in the state treasury;

(15) Seventy-three million dollars to the east capitol campus construction account hereby created in the state treasury;

(16) Eight million dollars to the higher education construction account created in RCW 28B.14D.040;

(17) Sixty-three million two hundred thousand dollars to the labor and industries construction account hereby created in the state treasury;

(18) Seventy-five million dollars to the higher education construction account created by RCW 28B.14D.040;

(19) Twenty-six million five hundred fifty thousand dollars to the habitat conservation account hereby created in the state treasury; and

(20) Eight million dollars to the public safety reimbursable bond account hereby created in the state treasury.

These proceeds shall be used exclusively for the purposes specified in this subsection, and for the payment of expenses incurred in the issuance and sale of the bonds issued for the purposes of this section, and shall be administered by the office of financial management, subject to legislative appropriation.

Bonds authorized for the purposes of subsection (17) of this section shall be issued only after the director of the department of labor and industries has certified, based on reasonable estimates, that sufficient revenues will be available from the accident fund created in RCW 51.44.010 and the medical aid fund created in RCW 51.44.020 to meet the requirements of RCW 43.99H.060(4) during the life of the bonds.

Bonds authorized for the purposes of subsection (18) of this section shall be issued only after the board of regents of the University of Washington has certified, based on reasonable estimates, that sufficient revenues will be available from nonappropriated local funds to meet the requirements of RCW 43.99H.060(4) during the life of the bonds. [1990 1st ex.s. c 15 § 2; 1990 c 33 § 582; 1989 1st ex.s. c 14 § 2].

Reviser's note: (1) This section was amended by 1990 c 33 § 582 and by 1990 1st ex.s. c 15 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

*(2) RCW 75.48.030 was repealed by 1991 1st sp.s. c 13 § 122, effective July 1, 1991.

Severability—1990 1st ex.s. c 15: See note following RCW 43.99H.010.

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

43.99H.030 Retirement of bonds. Both principal and interest on the bonds issued for the purposes specified in RCW 43.99H.020 (1) through (3), (5) through (14), and (19) shall be payable from the state general obligation bond retirement fund. The state finance committee may provide that a special account be created in such fund to facilitate payment of such principal and interest.

The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required to provide for the payment of principal and interest on such bonds during the ensuing fiscal year in accordance with the provisions of the bond proceedings. The state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the state general obligation bond retirement fund, or a special account in such fund, such amounts and at such times as are required by the bond proceedings. [1991 1st sp.s. c 31 § 13; 1990 1st ex.s. c 15 § 4; 1989 1st ex.s. c 14 § 3.]

Severability—1991 1st sp.s. c 31: See RCW 43.99I.900.

Severability—1990 1st ex.s. c 15: See note following RCW 43.99H.010.

43.99H.040 Retirement of bonds. (1) Both principal of and interest on the bonds issued for the purposes of RCW 43.99H.020(16) shall be payable from the higher education bond retirement fund of 1979. The state finance committee may provide that a special account be created in such fund to facilitate payment of such principal and interest.

The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required to provide for the payment of principal and interest on such bonds during the ensuing fiscal year in accordance with the provisions of the bond proceedings. The state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the higher education bond retirement fund of 1979, or a special account in such fund, such amounts and at such times as are required by the bond proceedings.

(2) Both principal of and interest on the bonds issued for the purposes of RCW 43.99H.020(15) shall be payable from the state general obligation bond retirement fund. The state finance committee may provide that a special account be created in such fund to facilitate payment of such principal and interest.

The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required to provide for the payment of principal and interest on such bonds during the ensuing fiscal year in accordance with the provisions of the bond proceedings. The state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the state general obligation bond retirement fund, or a special account in such fund, such amounts and at such times as are required by the bond proceedings.

(3) Both principal of and interest on the bonds issued for the purposes of RCW 43.99H.020(17) shall be payable from the state general obligation bond retirement fund. The state finance committee may provide that a special account be created in such fund to facilitate payment of such principal and interest.

The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required to provide for the payment of principal and interest on such bonds during the ensuing fiscal year

in accordance with the provisions of the bond proceedings. The state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the state general obligation bond retirement fund, or a special account in such fund, such amounts and at such times as are required by the bond proceedings.

(4) Both principal of and interest on the bonds issued for the purposes of RCW 43.99H.020(18) shall be payable from the state general obligation bond retirement fund. The state finance committee may provide that a special account be created in such fund to facilitate payment of such principal and interest.

The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required to provide for the payment of principal and interest on such bonds during the ensuing fiscal year in accordance with the provisions of the bond proceedings. The state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the state general obligation bond retirement fund, or a special account in such fund, such amounts and at such times as are required by the bond proceedings.

(5) Both principal of and interest on the bonds issued for the purposes of RCW 43.99H.020(20) shall be payable from the state general obligation bond retirement fund. The state finance committee may provide that a special account be created in such fund to facilitate payment of such principal and interest.

The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required to provide for the payment of principal and interest on such bonds during the ensuing fiscal year in accordance with the provisions of the bond proceedings. The state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the state general obligation bond retirement fund, or a special account in such fund, such amounts and at such times as are required by the bond proceedings.

(6) Both principal of and interest on the bonds issued for the purposes of RCW 43.99H.020(4) shall be payable from the state general obligation bond retirement fund. The state finance committee may provide that a special account be created in such fund to facilitate payment of such principal and interest.

The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required to provide for the payment of principal and interest on such bonds during the ensuing fiscal year in accordance with the provisions of the bond proceedings. The state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the state general obligation bond retirement fund, or a special account in such fund, such amounts and at such times as are required by the bond proceedings. [1991 1st sp.s. c 31 § 14; 1990 1st ex.s. c 15 § 5; 1989 1st ex.s. c 14 § 4.]

Severability—1991 1st sp.s. c 31: See RCW 43.99I.900.

Severability—1990 1st ex.s. c 15: See note following RCW 43.99H.010.

43.99H.060 Reimbursement of general fund. (1) For bonds issued for the purposes of RCW 43.99H.020(16), on each date on which any interest or principal and interest payment is due, the board of regents or the board of trustees of Washington State University shall cause the amount computed in RCW 43.99H.040(1) to be paid out of the appropriate building account or capital projects account to the state treasurer for deposit into the general fund of the state treasury.

(2) For bonds issued for the purposes of RCW 43.99H.020(15), on each date on which any interest or principal and interest payment is due, the state treasurer shall transfer the amount computed in RCW 43.99H.040(2) from the capitol campus reserve account, hereby created in the state treasury, to the general fund of the state treasury. At the time of sale of the bonds issued for the purposes of RCW 43.99H.020(15), and on or before June 30th of each succeeding year while such bonds remain outstanding, the state finance committee shall determine, based on current balances and estimated receipts and expenditures from the capitol campus reserve account, that portion of principal and interest on such RCW 43.99H.020(15) bonds which will, by virtue of payments from the capitol campus reserve account, be reimbursed from sources other than "general state revenues" as that term is defined in Article VIII, section 1 of the state Constitution. The amount so determined by the state finance committee, as from time to time adjusted in accordance with this subsection, shall not constitute indebtedness for purposes of the limitations set forth in RCW 39.42.060.

(3) For bonds issued for the purposes of RCW 43.99H.020(17), on each date on which any interest or principal and interest payment is due, the director of the department of labor and industries shall cause fifty percent of the amount computed in RCW 43.99H.040(3) to be transferred from the accident fund created in RCW 51.44.010 and fifty percent of the amount computed in RCW 43.99H.040(3) to be transferred from the medical aid fund created in RCW 51.44.020, to the general fund of the state treasury.

(4) For bonds issued for the purposes of RCW 43.99H.020(18), on each date on which any interest or principal and interest payment is due, the board of regents of the University of Washington shall cause the amount computed in RCW 43.99H.040(4) to be paid out of University of Washington nonappropriated local funds to the state treasurer for deposit into the general fund of the state treasury.

(5) For bonds issued for the purposes of RCW 43.99H.020(20), on each date on which any interest or principal and interest payment is due, the state treasurer shall transfer the amount computed in RCW 43.99H.040(5) from the public safety and education account created in RCW 43.08.250 to the general fund of the state treasury.

(6) For bonds issued for the purposes of RCW 43.99H.020(4), on each date on which any interest or

principal and interest payment is due, the state treasurer shall transfer from property taxes in the state general fund levied for the support of the common schools under RCW 84.52.065 to the general fund of the state treasury for unrestricted use the amount computed in RCW 43.99H.040(6). [1991 1st sp.s. c 31 § 15; 1990 1st ex.s. c 15 § 6; 1989 1st ex.s. c 14 § 6.]

Severability—1991 1st sp.s. c 31: See RCW 43.99I.900.

Severability—1990 1st ex.s. c 15: See note following RCW 43.99H.010.

43.99H.080 1989–1991 fiscal biennium general obligation bonds for capital and operating appropriations act—Additional means for payment of principal and interest. The legislature may provide additional means for raising moneys for the payment of the principal and interest on the bonds authorized in RCW 43.99H.010. RCW 43.99H.030 and 43.99H.040 shall not be deemed to provide an exclusive method for the payment. [1990 1st ex.s. c 15 § 3; 1989 1st ex.s. c 14 § 8.]

Severability—1990 1st ex.s. c 15: See note following RCW 43.99H.010.

Chapter 43.99I

FINANCING FOR CAPITAL AND OPERATING APPROPRIATIONS—1991–1993 FISCAL BIENNIUM

Sections

43.99I.010	1991–1993 fiscal biennium—General obligation bonds for capital and operating appropriations act.
43.99I.020	Conditions and limitations.
43.99I.030	Retirement of bonds.
43.99I.040	Reimbursement of general fund.
43.99I.050	Reimbursement of general fund.
43.99I.060	Pledge and promise—Remedies.
43.99I.070	Additional means for payment of principal and interest.
43.99I.080	Legal investment.
43.99I.900	Severability—1991 1st sp.s. c 31.

43.99I.010 1991–1993 fiscal biennium—General obligation bonds for capital and operating appropriations act. The state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of one billion ninety-five million dollars, or so much thereof as may be required, to finance the projects described and authorized by the legislature in the capital and operating appropriations acts for the 1991–1993 fiscal biennium and subsequent fiscal biennia, and all costs incidental thereto.

Bonds authorized in this section shall be sold in such manner, at such time or times, in such amounts, and at such price as the state finance committee shall determine. No such bonds may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds. The state finance committee may obtain insurance, letters of credit, or other credit enhancements and may authorize the execution and delivery of agreements, promissory notes, and other obligations for the purpose of insuring the payment or enhancing the marketability of bonds authorized in this section. Promissory notes or other obligations issued pursuant to this

section shall not constitute a debt or the contracting of indebtedness under any constitutional or statutory indebtedness limitation if their payment is conditioned upon the failure of the state to pay the principal of or interest on the bonds with respect to which the same relate.

The state finance committee shall consider the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued. [1991 1st sp.s. c 31 § 1.]

43.99I.020 Conditions and limitations. Bonds issued under RCW 43.99I.010 are subject to the following conditions and limitations:

General obligation bonds of the state of Washington in the sum of one billion ninety-five million dollars, or so much thereof as may be required, shall be issued for the purposes described and authorized by the legislature in the capital and operating appropriations acts for the 1991-93 fiscal biennium and subsequent fiscal biennia, and to provide for the administrative cost of such projects, including costs of bond issuance and retirement, salaries and related costs of officials and employees of the state, costs of insurance or credit enhancement agreements, and other expenses incidental to the administration of capital projects. Subject to such changes as may be required in the appropriations acts, the proceeds from the sale of the bonds issued for the purposes of this subsection shall be deposited in the state building construction account created by RCW 43.83.020 and transferred as follows:

(1) Eight hundred thirty-five thousand dollars to the state higher education construction account created by RCW 28B.10.851;

(2) Eight hundred twenty-three million dollars to the state building construction account created by RCW 43.83.020;

(3) Fifteen million dollars to the energy efficiency construction account created by RCW 39.35C.100;

(4) Three million fifty thousand dollars to the energy efficiency services account created by RCW 39.35C.110;

(5) One hundred twenty million dollars to the common school reimbursable construction account hereby created in the state treasury;

(6) Ninety-eight million six hundred forty-eight thousand dollars to the higher education reimbursable construction account hereby created in the state treasury; and

(7) Two million four hundred five thousand dollars to the wildlife reimbursable construction account hereby created in the state treasury.

These proceeds shall be used exclusively for the purposes specified in this subsection, and for the payment of expenses incurred in the issuance and sale of the bonds issued for the purposes of this section, and shall be administered by the office of financial management, subject to legislative appropriation. [1991 1st sp.s. c 31 § 2.]

43.99I.030 Retirement of bonds. (1) Both principal of and interest on the bonds issued for the purposes specified in RCW 43.99I.020 (1) through (7) shall be payable from the state general obligation bond retirement fund. The state finance committee may provide that a special account be created in such fund to facilitate payment of such principal and interest.

(2) The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required to provide for the payment of principal and interest on such bonds during the ensuing fiscal year in accordance with the provisions of the bond proceedings. The state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the state general obligation bond retirement fund, or a special account in such fund, such amounts and at such times as are required by the bond proceedings. [1991 1st sp.s. c 31 § 3.]

43.99I.040 Reimbursement of general fund. (1) On each date on which any interest or principal and interest payment is due on bonds issued for the purposes of RCW 43.99I.020 (3) and (4), the state treasurer shall transfer from the energy efficiency construction account created in RCW 39.35C.100 to the general fund of the state treasury the amount computed in RCW 43.99I.030 for the bonds issued for the purposes of RCW 43.99I.020 (3) and (4).

(2) On each date on which any interest or principal and interest payment is due on bonds issued for the purposes of RCW 43.99I.020(5), the state treasurer shall transfer from property taxes in the state general fund levied for this support of the common schools under RCW 84.52.065 to the general fund of the state treasury for unrestricted use the amount computed in RCW 43.99I.030 for the bonds issued for the purposes of RCW 43.99I.020(5).

(3) On each date on which any interest or principal and interest payment is due on bonds issued for the purposes of RCW 43.99I.020(6), the state treasurer shall transfer from higher education operating fees deposited in the general fund to the general fund of the state treasury for unrestricted use the amount computed in RCW 43.99I.030 for the bonds issued for the purposes of RCW 43.99I.020(6).

(4) On each date on which any interest or principal and interest payment is due on bonds issued for the purposes of RCW 43.99I.020(7), the state treasurer shall transfer from the state wildlife fund to the general fund of the state treasury the amount computed in RCW 43.99I.030 for the bonds issued for the purpose of RCW 43.99I.020(7). [1991 1st sp.s. c 31 § 4.]

43.99I.050 Reimbursement of general fund. In addition to any other charges authorized by law and to assist in the reimbursement of principal and interest payments on bonds issued for the purposes of RCW 43.99I.020 (3) and (4), the director of the energy office shall cause to be accumulated in the energy efficiency construction account, from project revenues, loan repayments, and other

moneys legally available for such purposes, amounts adequate to make payments of principal of and interest coming due on general obligation bonds issued for the purposes of RCW 43.99I.020 (3) and (4). As needed during each fiscal year, the director shall cause amounts so accumulated to be deposited into the general fund of the state treasury. If the director is unable to accumulate and transfer the full amount necessary for such payments of principal of and interest coming due on the bonds, any shortfall shall be credited to an account receivable from the energy office to the state treasury. [1991 1st sp.s. c 31 § 5.]

43.99I.060 Pledge and promise—Remedies. Bonds issued under RCW 43.99I.010 shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay the principal and interest as the same shall become due.

The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [1991 1st sp.s. c 31 § 6.]

43.99I.070 Additional means for payment of principal and interest. The legislature may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in RCW 43.99I.010, and RCW 43.99I.030 and 43.99I.040 shall not be deemed to provide an exclusive method for the payment. [1991 1st sp.s. c 31 § 7.]

43.99I.080 Legal investment. The bonds authorized in RCW 43.99I.010 shall be a legal investment for all state funds or funds under state control and for all funds of any other public body. [1991 1st sp.s. c 31 § 8.]

43.99I.900 Severability—1991 1st sp.s. c 31. 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. [1991 1st sp.s. c 31 § 18.]

Chapter 43.101

CRIMINAL JUSTICE TRAINING COMMISSION—EDUCATION AND TRAINING STANDARDS BOARDS

Sections

43.101.250	Firearms certificate program for private detectives.
43.101.260	Firearms certificate program for security guards.
43.101.270	Sexual assault—Training for investigating and prosecuting.

43.101.250 Firearms certificate program for private detectives. The commission shall establish a program for issuing firearms certificates to private detectives for the purposes of obtaining armed private detective licenses. The commission shall adopt rules establishing the fees,

training requirements, and procedures for obtaining and annually renewing firearms certificates. The fees charged by the commission shall recover the costs incurred by the commission in administering the firearms certificate program.

(1) Firearms training must be provided by an organization or trainer approved by the commission and must consist of at least eight hours of classes and proficiency training.

(2) Applications for firearms certificates shall be filed with the commission on a form provided by the commission. The commission may require any information and documentation that reasonably relates to the need to determine whether the applicant qualifies for a firearms certificate. Applicants must:

- Be at least twenty-one years of age;
- Possess a current private detective license; and
- Present a written request from the owner or qualifying agent of a licensed private detective agency that the applicant be issued a firearms certificate.

(3) The commission shall consult with the private security industry and law enforcement before adopting or amending the training requirements of this section.

(4) The commission may adopt rules that are reasonable and necessary for the effective implementation and administration of this section consistent with chapter 34.05 RCW. [1991 c 328 § 28.]

Severability—1991 c 328: See RCW 18.165.900.

43.101.260 Firearms certificate program for security guards. The commission shall establish a program for issuing firearms certificates to security guards for the purposes of obtaining armed security guard licenses. The commission shall adopt rules establishing the fees, training requirements, and procedures for obtaining and annually renewing firearms certificates. The fees charged by the commission shall recover the costs incurred by the commission in administering the firearms certificate program.

(1) Firearms training must be provided by an organization or trainer approved by the commission and must consist of at least eight hours of classes and proficiency training.

(2) Applications for firearms certificates shall be filed with the commission on a form provided by the commission. The commission may require any information and documentation that reasonably relates to the need to determine whether the applicant qualifies for a firearms certificate. Applicants must:

- Be at least twenty-one years of age;
- Possess a current private security guard license; and
- Present a written request from the owner or qualifying agent of a licensed private security company that the applicant be issued a firearms certificate.

(3) The commission shall consult with the private security industry and law enforcement before adopting or amending the training requirements of this section.

(4) The commission may adopt rules that are reasonable and necessary for the effective implementation and

administration of this section consistent with chapter 34.05 RCW. [1991 c 334 § 29.]

Severability—1991 c 334: See RCW 18.170.900.

43.101.270 Sexual assault—Training for investigating and prosecuting. (1) Each year the criminal justice training commission shall offer an intensive, integrated training session on investigating and prosecuting sexual assault cases. The training shall place particular emphasis on the development of professionalism and sensitivity towards the victim and the victim's family.

(2) The commission shall seek advice from the Washington association of prosecuting attorneys, the Washington defender association, the Washington association of sheriffs and police chiefs, and the Washington coalition of sexual assault programs.

(3) The training shall be an integrated approach to sexual assault cases so that prosecutors, law enforcement, defenders, and victim advocates can all benefit from the training.

(4) The training shall be self-supporting through fees charged to the participants of the training. [1991 c 267 § 2.]

Findings—1991 c 267: "The safety of all children is enhanced when sexual assault cases are properly investigated and prosecuted. The victim of the sexual assault and the victim's family have a right to be treated with sensitivity and professionalism, which also increases the likelihood of their continued cooperation with the investigation and prosecution of the case. The legislature finds the sexual assault cases, particularly those involving victims who are children, are difficult to prosecute successfully. The cooperation of a victim and the victim's family through the investigation and prosecution of the sexual assault case is enhanced and the trauma associated with the investigation and prosecution is reduced when trained victim advocates assist the victim and the victim's family through the investigation and prosecution of the case. Trained victim advocates also assist law enforcement, prosecutors, and defense attorneys, by relieving some of the burden of explaining the investigation and prosecution process and possible delays to the victim and accompanying the victim during interviews by the police, prosecutor, and defense attorney, and accompanying the victim during hearings and the trial.

The legislature finds that counties should give priority to the successful prosecution of sexual assault cases, especially those that involve children, by ensuring that prosecutors, investigators, defense attorneys, and victim advocates are properly trained and available. Therefore, the legislature intends to establish a mechanism to provide the necessary training of prosecutors, law enforcement investigators, defense attorneys, and victim advocates and ensure the availability of victim advocates for victims of sexual assault and their families." [1991 c 267 § 1.]

Effective date—1991 c 267: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 267 § 7.]

Chapter 43.103

WASHINGTON STATE DEATH INVESTIGATIONS COUNCIL

Sections

- 43.103.030 Council created—Powers and duties.
43.103.100 Sudden infant death syndrome—Training.

43.103.030 Council created—Powers and duties. There is created the Washington state death investigations council. The council shall oversee the state toxicology laboratory and, together with the president of the University of Washington, control the laboratory's operation. The council may also study and recommend cost-efficient improvements to the death investigation system in Washington and report its findings to the legislature.

Further, the council shall, jointly with the chairperson of the pathology department of the University of Washington's School of Medicine, or the chairperson's designee, oversee the state forensic pathology fellowship program, determine the budget for the program and set the fellow's annual salary, and take those steps necessary to administer the program. [1991 c 176 § 2; 1983 1st ex.s. c 16 § 3.]

Forensic pathology fellowship program: RCW 28B.20.426.

43.103.100 Sudden infant death syndrome—Training. The council shall research and develop an appropriate training component on the subject of sudden, unexplained child death, including but not limited to sudden infant death syndrome. The training component shall include, at a minimum:

(1) Medical information on sudden, unexplained child death for first responders, including awareness and sensitivity in dealing with families and child care providers, and the importance of forensically competent death scene investigation;

(2) Information on community resources and support groups available to assist families who have lost a child to sudden, unexplained death, including sudden infant death syndrome;

(3) Development and adoption of an up-to-date protocol of investigation in cases of sudden, unexplained child death, including the importance of a consistent policy of thorough death scene investigation, and an autopsy in unresolved cases as appropriate;

(4) The value of timely communication between the county coroner or medical examiner and the public health department, when a sudden, unexplained child death occurs, in order to achieve a better understanding of such deaths, and connecting families to various community and public health support systems to enhance recovery from grief.

The council shall work with volunteer groups with expertise in the area of sudden, unexplained child death, including but not limited to the SIDS Northwest Regional Center at Children's Hospital, the Washington chapter of the national SIDS foundation, and the Washington association of county officials.

Upon development of an appropriate curriculum, agreed upon by the council, the training module shall be offered to first responders, coroners, medical examiners, prosecuting attorneys serving as coroners, and investigators, both voluntarily through their various associations and as a course offering at the criminal justice training center. [1991 c 176 § 6.]

Finding—Declaration—1991 c 176: "The legislature finds and declares that sudden and unexplained child deaths are a leading cause of death for children under age three. The public interest is served by

research and study of the potential causes and indications of such unexplained child deaths and the prevention of inaccurate and inappropriate designation of sudden infant death syndrome (SIDS) as a cause of death. The legislature further finds and declares that law enforcement officers, fire fighters, emergency medical technicians, and other first responders in emergency situations are not adequately informed regarding sudden, unexplained death in young children including but not limited to sudden infant death syndrome, its signs and typical history, and as a result may compound the family and child care provider's grief through conveyed suspicions of a criminal act. Coroners, investigators, and prosecuting attorneys are also in need of updated training on the identification of unexplained death in children under the age of three, including but not limited to sudden infant death syndrome awareness and sensitivity and the establishment of a state-wide uniform protocol in cases of sudden, unexplained child death." [1991 c 176 § 5.]

Chapter 43.105

DEPARTMENT OF INFORMATION SERVICES

(Formerly: Data processing and communications systems)

Sections

43.105.005	Purpose.
43.105.017	Legislative intent.
43.105.020	Definitions.
43.105.041	Powers and duties of board.
43.105.052	Powers and duties of department.
43.105.057	Rule-making authority.

Reviser's note—Sunset Act application: The information services board and the department of information services are subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.353. Chapter 43.105 RCW is scheduled for future expiration and RCW 41.06.094 is scheduled for future repeal under RCW 43.131.354.

43.105.005 Purpose. It is a purpose of this chapter to provide for coordinated planning and management of state information services. The legislature recognizes that information systems, telecommunications, equipment, software, and services must satisfy the needs of end users and that many appropriate and cost-effective alternatives exist for meeting these needs, such as shared mainframe computing, shared voice, data, and video telecommunications services, local area networks, departmental minicomputers, and microcomputers. [1990 c 208 § 1; 1987 c 504 § 1.]

Sunset Act application: See note following chapter digest.

43.105.017 Legislative intent. It is the intent of the legislature that:

- (1) State government use voice, data, and video telecommunications technologies to:
 - (a) Transmit and increase access to live, interactive classroom instruction and training;
 - (b) Provide for interactive public affairs presentations, including a public forum for state and local issues;
 - (c) Facilitate communications and exchange of information among state and local elected officials and the general public;
 - (d) Enhance state-wide communications within state agencies; and
 - (e) Through the use of telecommunications, reduce time lost due to travel to in-state meetings;

(2) Information be shared and administered in a coordinated manner, except when prevented by agency responsibilities for security, privacy, or confidentiality;

(3) The primary responsibility for the management and use of information, information systems, telecommunications, equipment, software, and services rests with each agency;

(4) Resources be used in the most efficient manner and services be shared when cost-effective;

(5) A structure be created to:

(a) Plan and manage telecommunications and computing networks;

(b) Increase agencies' awareness of information sharing opportunities; and

(c) Assist agencies in implementing such possibilities;

(6) An acquisition process for equipment, proprietary software, and related services be established that meets the needs of the users, considers the exchange of information, and promotes fair and open competition;

(7) The state improve recruitment, retention, and training of professional staff;

(8) Plans, proposals, and acquisitions for information services be reviewed from a financial and management perspective as part of the budget process; and

(9) State government adopt policies and procedures that maximize the use of existing video telecommunications resources, coordinate and develop video telecommunications in a manner that is cost-effective and encourages shared use, and ensure the appropriate use of video telecommunications to fulfill identified needs. [1990 c 208 § 2; 1987 c 504 § 2.]

Sunset Act application: See note following chapter digest.

43.105.020 Definitions. As used in this chapter, unless the context indicates otherwise, the following definitions shall apply:

(1) "Department" means the department of information services;

(2) "Board" means the information services board;

(3) "Local governments" includes all municipal and quasi municipal corporations and political subdivisions, and all agencies of such corporations and subdivisions authorized to contract separately;

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

(5) "Purchased services" means services provided by a vendor to accomplish routine, continuing, and necessary functions. This term includes, but is not limited to, services acquired for equipment maintenance and repair, operation of a physical plant, security, computer hardware and software installation and maintenance, data entry, keypunch services, programming services, and computer time-sharing;

(6) "Backbone network" means the shared high-density portions of the state's telecommunications transmission facilities. It includes specially conditioned high-speed communications carrier lines, multiplexors, switches associated with such communications lines, and any equipment and software components necessary for management and control of the backbone network;

(7) "Telecommunications" means the transmission of information by wire, radio, optical cable, electromagnetic, or other means;

(8) "Information processing" means the electronic capture, collection, storage, manipulation, transmission, retrieval, and presentation of information in the form of data, text, voice, or image and includes telecommunications and office automation functions;

(9) "Information services" means data processing, telecommunications, and office automation;

(10) "Equipment" means the machines, devices, and transmission facilities used in information processing, such as computers, word processors, terminals, telephones, and cables;

(11) "Proprietary software" means that software offered for sale or license;

(12) "Video telecommunications" means the electronic interconnection of two or more sites for the purpose of transmitting and/or receiving visual and associated audio information. Video telecommunications shall not include existing public television broadcast stations as currently designated by the department of community development under chapter 43.63A RCW. [1990 c 208 § 3; 1987 c 504 § 3; 1973 1st ex.s. c 219 § 3; 1967 ex.s. c 115 § 2.]

Sunset Act application: See note following chapter digest.

Effective date—1967 ex.s. c 115: "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 July 1, 1967." [1967 ex.s. c 115 § 8.]

43.105.041 Powers and duties of board. The board shall have the following powers and duties related to information services:

(1) To develop standards governing the acquisition and disposition of equipment, proprietary software and purchased services, and confidentiality of computerized data;

(2) To purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services, or to delegate to other agencies and institutions of state government, under appropriate standards, the authority to purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services: PROVIDED, That, agencies and institutions of state government are expressly prohibited from acquiring or disposing of equipment, proprietary software, and purchased services without such delegation of authority. The acquisition and disposition of equipment, proprietary software, and purchased services is exempt from RCW 43.19.1919 and, as provided in RCW 43.19.1901, from the provisions of RCW 43.19.190 through 43.19.200. This subsection does not apply to the legislative branch;

(3) To develop state-wide or interagency technical policies, standards, and procedures;

(4) To assure the cost-effective development and incremental implementation of a state-wide video telecommunications system to serve: Public schools;

educational service districts; vocational-technical institutes; community colleges; colleges and universities; state and local government; and the general public through public affairs programming;

(5) To provide direction concerning strategic planning goals and objectives for the state. The board shall seek input from the legislature and the judiciary;

(6) To develop and implement a process for the resolution of appeals by:

(a) Vendors concerning the conduct of an acquisition process by an agency or the department; or

(b) A customer agency concerning the provision of services by the department or by other state agency providers;

(7) To establish policies for the periodic review by the department of agency performance which may include but are not limited to analysis of:

(a) Planning, management, control, and use of information services;

(b) Training and education; and

(c) Project management;

(8) To set its meeting schedules and convene at scheduled times, or meet at the request of a majority of its members, the chair, or the director; and

(9) To review and approve that portion of the department's budget requests that provides for support to the board. [1990 c 208 § 6; 1987 c 504 § 5; 1983 c 3 § 115; 1973 1st ex.s. c 219 § 6.]

Sunset Act application: See note following chapter digest.

43.105.052 Powers and duties of department. The department shall:

(1) Perform all duties and responsibilities the board delegates to the department, including but not limited to:

(a) The review of agency acquisition plans and requests; and

(b) Implementation of state-wide and interagency policies, standards, and guidelines;

(2) Make available information services to state agencies and local governments on a full cost-recovery basis. These services may include, but are not limited to:

(a) Telecommunications services for voice, data, and video;

(b) Mainframe computing services;

(c) Support for departmental and microcomputer evaluation, installation, and use;

(d) Equipment acquisition assistance, including leasing, brokering, and establishing master contracts;

(e) Facilities management services for information technology equipment, equipment repair, and maintenance service;

(f) Negotiate [Negotiation] with local cable companies and local governments to provide for connection to local cable services to allow for access to these public and educational channels in the state;

(g) Office automation services;

(h) System development services; and

(i) Training.

These services are for discretionary use by customers and customers may elect other alternatives for service if

those alternatives are more cost-effective or provide better service. Agencies may be required to use the backbone network portions of the telecommunications services during an initial start-up period not to exceed three years;

(3) Establish rates and fees for services provided by the department to assure that the services component of the department is self-supporting. A billing rate plan shall be developed for a two-year period to coincide with the budgeting process. The rate plan shall be subject to review at least annually by the customer oversight committees. The rate plan shall show the proposed rates by each cost center and will show the components of the rate structure as mutually determined by the department and the customer oversight committees. The same rate structure will apply to all user agencies of each cost center. The rate plan and any adjustments to rates shall be approved by the office of financial management. The services component shall not subsidize the operations of the planning component;

(4) With the advice of the information services board and agencies, develop and publish state-wide goals and objectives at least biennially;

(5) Develop plans for the department's achievement of state-wide goals and objectives. These plans shall address such services as telecommunications, central and distributed computing, local area networks, office automation, and end user computing. The department shall seek the advice of customer oversight committees and the board in the development of these plans;

(6) Under direction of the information services board and in collaboration with the department of personnel, the higher education personnel board, and other agencies as may be appropriate, develop training plans and coordinate training programs that are responsive to the needs of agencies;

(7) Identify opportunities for the effective use of information services and coordinate appropriate responses to those opportunities;

(8) Assess agencies' projects, acquisitions, plans, or overall information processing performance as requested by the board, agencies, the director of financial management, or the legislature. Agencies may be required to reimburse the department for agency-requested reviews;

(9) Develop planning, budgeting, and expenditure reporting requirements, in conjunction with the office of financial management, for agencies to follow;

(10) Assist the office of financial management with budgetary and policy review of agency plans for information services;

(11) Provide staff support from the planning component to the board for:

- (a) Meeting preparation, notices, and minutes;
- (b) Promulgation of policies, standards, and guidelines adopted by the board;
- (c) Supervision of studies and reports requested by the board;
- (d) Conducting reviews and assessments as directed by the board;

(12) Be the lead agency in coordinating video telecommunications services for all state agencies and develop, pursuant to board policies, standards and common specifications for leased and purchased telecommunications equipment. The department shall not evaluate the merits of school curriculum, higher education course offerings, or other education and training programs proposed for transmission and/or reception using video telecommunications resources. Nothing in this section shall abrogate or abridge the legal responsibilities of licensees of telecommunications facilities as licensed by the federal communication commission on March 27, 1990; and

(13) Perform all other matters and things necessary to carry out the purposes and provisions of this chapter. [1990 c 208 § 7; 1987 c 504 § 8.]

Sunset Act application: See note following chapter digest.

43.105.057 Rule-making authority. The department of information services and the information services board, respectively, shall adopt rules as necessary under chapter 34.05 RCW to implement the provisions of RCW 43.105.005, 43.105.017, *43.105.032, 43.105.041, 43.105.052, and *section 5 of this act. [1990 c 208 § 13.]

***Reviser's note:** The amendment to RCW 43.105.032 by 1990 c 208 and "section 5 of this act" [1990 c 208 § 5] were vetoed.

Chapter 43.110

MUNICIPAL RESEARCH COUNCIL

Sections

43.110.010	Council created—Membership—Terms—Travel expenses.
43.110.030	Municipal research and services—Provision to cities and towns.

43.110.010 Council created—Membership—Terms—Travel expenses. There shall be a state agency which shall be known as the municipal research council. The council shall be composed of eighteen members. Four members shall be appointed by the president of the senate, with equal representation from each of the two major political parties; four members shall be appointed by the speaker of the house of representatives, with equal representation from each of the two major political parties; one member shall be appointed by the governor; and the other nine members, who shall be city officials, shall be appointed by the board of directors of the association of Washington cities. Of the members appointed by the association, at least one shall be an official of a city having a population of twenty thousand or more; at least one shall be an official of a city having a population of one thousand five hundred to twenty thousand; and at least one shall be an official of a town having a population of less than one thousand five hundred.

The terms of members shall be for two years and shall not be dependent upon continuance in legislative or city office. The terms of all members except legislative members shall commence on the first day of August in

every odd-numbered year. The speaker of the house of representatives and the president of the senate shall make their appointments on or before the third Monday in January in each odd-numbered year, and the terms of the members thus appointed shall commence on the third Monday of January in each odd-numbered year.

Council members shall receive no compensation but shall be reimbursed for travel expenses at rates in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, except that members of the council who are also members of the legislature shall be reimbursed at the rates provided by RCW 44.04.120. [1990 c 104 § 1; 1983 c 22 § 1; 1975-'76 2nd ex.s. c 34 § 129; 1975 1st ex.s. c 218 § 1; 1969 c 108 § 2.]

Effective date—1983 c 22: "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 June 30, 1983." [1983 c 22 § 5.]

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

Severability—**Effective date**—1969 c 108: See notes following RCW 82.44.160.

43.110.030 Municipal research and services—

Provision to cities and towns. The municipal research council shall contract for the provision of municipal research and services to cities and towns. Contracts for municipal research and services shall be made with state agencies, educational institutions, or private consulting firms, that in the judgment of council members are qualified to provide such research and services. Contracts for staff support may be made with state agencies, educational institutions, or private consulting firms that in the judgment of the council members are qualified to provide such support.

Municipal research and services shall consist of: (1) Studying and researching municipal government and issues relating to municipal government; (2) acquiring, preparing, and distributing publications related to municipal government and issues relating to municipal government; (3) providing educational conferences relating to municipal government and issues relating to municipal government; and (4) furnishing legal, technical, consultative, and field services to cities and towns concerning planning, public health, utility services, fire protection, law enforcement, public works, and other issues relating to municipal government.

The activities, programs, and services of the municipal research council shall be carried on, and all expenditures shall be made, in cooperation with the cities and towns of the state acting through the board of directors of the association of Washington cities, which is recognized as their official agency or instrumentality. [1990 c 104 § 2.]

Chapter 43.131

WASHINGTON SUNSET ACT

Sections

43.131.010 Short title.

43.131.050	Legislative budget committee and office of financial management—Duties—Reports required.
43.131.249	Repealed.
43.131.250	Repealed.
43.131.254	Hospital commission—Repeal.
43.131.256	Repealed.
43.131.269	Repealed.
43.131.270	Repealed.
43.131.301	Recodified as RCW 18.51.910.
43.131.302	Recodified as RCW 18.51.911.
43.131.303	Recodified as RCW 18.73.920.
43.131.304	Recodified as RCW 18.73.921.
43.131.315	through 43.131.320 Repealed.
43.131.323	Recodified as RCW 18.83.910.
43.131.325	Repealed.
43.131.326	Repealed.
43.131.331	Repealed.
43.131.332	Repealed.
43.131.335	Repealed.
43.131.336	Repealed.
43.131.339	Repealed.
43.131.343	Recodified as RCW 43.31.091.
43.131.344	Recodified as RCW 43.31.092.
43.131.345	Repealed.
43.131.346	Repealed.
43.131.349	Repealed.
43.131.350	Repealed.
43.131.351	Recodified as RCW 18.36A.910.
43.131.352	Recodified as RCW 18.36A.911.
43.131.357	Recodified as RCW 18.19.910.
43.131.358	Recodified as RCW 18.19.911.
43.131.359	Recodified as RCW 77.12.900.
43.131.360	Recodified as RCW 77.12.901.
43.131.361	Repealed.
43.131.362	Repealed.
43.131.363	Recodified as RCW 43.240.910.
43.131.364	Recodified as RCW 43.240.911.
43.131.367	Community diversification program—Termination.
43.131.368	Community diversification program—Repeal.
43.131.369	Puget Sound water quality authority—Termination.
43.131.370	Puget Sound water quality authority—Repeal.
43.131.371	School directors' association—Termination.
43.131.372	School directors' association—Repeal.
43.131.373	Pacific Northwest export assistance project—Termination.
43.131.374	Pacific Northwest export assistance project—Repeal.
43.131.375	Game fish mitigation—Termination.
43.131.376	Game fish mitigation—Repeal.

Master licensing program—Legislative budget committee performance audit: RCW 19.02.885.

43.131.010 Short title. This chapter may be known and cited as the Washington Sunset Act. [1990 c 297 § 1; 1977 ex.s. c 289 § 1.]

43.131.050 Legislative budget committee and office of financial management—Duties—Reports required. The legislative budget committee shall cause to be conducted a program and fiscal review of any state agency or program scheduled for termination by the processes provided in this chapter. Such program and fiscal review shall be completed and a preliminary report prepared on or before June 30th of the year prior to the date established for termination. Upon completion of its preliminary report, the legislative budget committee shall transmit copies of the report to the office of financial management. The office of financial management may then conduct its own program and fiscal review of the agency scheduled for termination and shall prepare a report on or before September 30th of the year prior to the date established for termination. Upon completion of

its report the office of financial management shall transmit copies of its report to the legislative budget committee. The legislative budget committee shall prepare a final report that includes the reports of both the office of financial management and the legislative budget committee. The legislative budget committee and the office of financial management shall, upon request, make available to each other all working papers, studies, and other documents which relate to reports required under this section. The legislative budget committee shall transmit the final report to the legislature, to the state agency concerned, to the governor, and to the state library. [1990 c 297 § 2; 1979 c 22 § 1; 1977 ex.s. c 289 § 5.]

43.131.249 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.250 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.254 *Hospital commission—Repeal. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 1990:

(1) Section 2, chapter 5, Laws of 1973 1st ex. sess., section 1, chapter 288, Laws of 1984 and RCW 70.39.010;

(2) Section 3, chapter 5, Laws of 1973 1st ex. sess., section 2, chapter 288, Laws of 1984 and RCW 70.39.020;

(3) Section 4, chapter 5, Laws of 1973 1st ex. sess., section 3, chapter 288, Laws of 1984 and RCW 70.39.030;

(4) Section 5, chapter 5, Laws of 1973 1st ex. sess., section 1, chapter 36, Laws of 1977, section 4, chapter 288, Laws of 1984 and RCW 70.39.040;

(5) Section 6, chapter 5, Laws of 1973 1st ex. sess., section 104, chapter 287, Laws of 1984, section 5, chapter 288, Laws of 1984 and RCW 70.39.050;

(6) Section 7, chapter 5, Laws of 1973 1st ex. sess., section 1, chapter 35, Laws of 1977, section 6, chapter 288, Laws of 1984 and RCW 70.39.060;

(7) Section 8, chapter 5, Laws of 1973 1st ex. sess., section 17, chapter 125, Laws of 1984, section 7, chapter 288, Laws of 1984 and RCW 70.39.070;

(8) Section 9, chapter 5, Laws of 1973 1st ex. sess., section 8, chapter 288, Laws of 1984 and RCW 70.39.080;

(9) Section 10, chapter 5, Laws of 1973 1st ex. sess., section 9, chapter 288, Laws of 1984 and RCW 70.39.090;

(10) Section 11, chapter 5, Laws of 1973 1st ex. sess., section 10, chapter 288, Laws of 1984 and RCW 70.39.100;

(11) Section 12, chapter 5, Laws of 1973 1st ex. sess., section 11, chapter 288, Laws of 1984 and RCW 70.39.110;

(12) Section 13, chapter 5, Laws of 1973 1st ex. sess., section 12, chapter 288, Laws of 1984 and RCW 70.39.120;

(13) Section 14, chapter 5, Laws of 1973 1st ex. sess., section 82, chapter 75, Laws of 1977, section 13, chapter 288, Laws of 1984, section 58, chapter 505, Laws of 1987 and RCW 70.39.130;

(14) Section 15, chapter 5, Laws of 1973 1st ex. sess., section 1, chapter 163, Laws of 1974 ex. sess., section 14, chapter 288, Laws of 1984, section 1, chapter 118, Laws of 1988 and RCW 70.39.140;

(15) Section 16, chapter 5, Laws of 1973 1st ex. sess., section 1, chapter 154, Laws of 1977 ex. sess., section 18, chapter 288, Laws of 1984 and RCW 70.39.150;

(16) Section 17, chapter 5, Laws of 1973 1st ex. sess., section 19, chapter 288, Laws of 1984 and RCW 70.39.160;

(17) Section 18, chapter 5, Laws of 1973 1st ex. sess., section 67, chapter 57, Laws of 1985 and RCW 70.39.170;

(18) Section 19, chapter 5, Laws of 1973 1st ex. sess. and RCW 70.39.180;

(19) Section 20, chapter 5, Laws of 1973 1st ex. sess. and RCW 70.39.190;

(20) Section 21, chapter 5, Laws of 1973 1st ex. sess., section 20, chapter 288, Laws of 1984 and RCW 70.39.200;

(21) Section 22, chapter 5, Laws of 1973 1st ex. sess. and RCW 70.39.900;

(22) Section 23, chapter 5, Laws of 1973 1st ex. sess. and RCW 70.39.910;

(23) Section 15, chapter 288, Laws of 1984 and RCW 70.39.165;

(24) Section 23, chapter 288, Laws of 1984 and RCW 70.39.195;

(25) Section 24, chapter 288, Laws of 1984 and RCW 70.39.125; and

(26) Section 1, chapter 262, Laws of 1988 and RCW 70.39.144. [1990 c 52 § 1; 1984 c 288 § 26; 1982 c 223 § 10.]

***Reviser's note:** All references to hospital commission shall be construed to mean department of health; see RCW 43.70.902.

Severability—1984 c 288: See note following RCW 70.39.010.

43.131.256 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.269 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.270 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.301 Recodified as RCW 18.51.910. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.302 Recodified as RCW 18.51.911. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.303 Recodified as RCW 18.73.920. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.304 Recodified as RCW 18.73.921. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.315 through 43.131.320 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.323 Recodified as RCW 18.83.910. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.325 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.326 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.331 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.332 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.335 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.336 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.339 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.343 Recodified as RCW 43.31.091. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.344 Recodified as RCW 43.31.092. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.345 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.346 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.349 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.350 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.351 Recodified as RCW 18.36A.910. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.352 Recodified as RCW 18.36A.911. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.357 Recodified as RCW 18.19.910. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.358 Recodified as RCW 18.19.911. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.359 Recodified as RCW 77.12.900. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.360 Recodified as RCW 77.12.901. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.361 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.362 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.363 Recodified as RCW 43.240.910. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.364 Recodified as RCW 43.240.911. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.131.367 Community diversification program—Termination. The community diversification program and the *advisory council on economic diversification shall be terminated on June 30, 1996, as provided in RCW 43.131.368. [1990 c 278 § 7.]

***Reviser's note:** The section which created the advisory council on economic diversification, 1990 c 278 § 3, was vetoed.

Legislative finding—Severability—1990 c 278: See notes following RCW 43.63A.450.

43.131.368 Community diversification program—

Repeal. The following acts, or parts of acts, as now existing or as hereafter amended, are each repealed, effective June 30, 1997:

(1) Section 2, chapter 278, Laws of 1990 and RCW 43.63A.450; and

(2) *Section 3, chapter 278, Laws of 1990 and RCW 43.63A.____. [1990 c 278 § 8.]

*Reviser's note: Section 3, chapter 278, Laws of 1990 was vetoed.

Legislative finding—Severability—1990 c 278: See notes following RCW 43.63A.450.

43.131.369 Puget Sound water quality authority—

Termination. The Puget Sound water quality authority and its powers and duties shall be terminated on June 30, 1995, as provided in RCW 43.131.370. [1990 c 115 § 11.]

43.131.370 Puget Sound water quality authority—

Repeal. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 1996:

(1) Section 1, chapter 451, Laws of 1985 and RCW 90.70.001;

(2) Section 2, chapter 451, Laws of 1985 and RCW 90.70.005;

(3) Section 3, chapter 451, Laws of 1985, section 2, chapter 115, Laws of 1990 and RCW 90.70.011;

(4) Section 5, chapter 451, Laws of 1985 and RCW 90.70.025;

(5) Section 6, chapter 451, Laws of 1985 and RCW 90.70.035;

(6) Section 7, chapter 451, Laws of 1985, section 72, chapter 36, Laws of 1988, section 3, chapter 115, Laws of 1990 and RCW 90.70.045;

(7) Section 4, chapter 451, Laws of 1985, section 4, chapter 115, Laws of 1990 and RCW 90.70.055;

(8) Section 8, chapter 451, Laws of 1985, section 31, chapter 11, Laws of 1989, section 5, chapter 115, Laws of 1990 and RCW 90.70.060;

(9) Section 9, chapter 451, Laws of 1985, section 6, chapter 115, Laws of 1990 and RCW 90.70.070;

(10) Section 10, chapter 451, Laws of 1985, section 7, chapter 115, Laws of 1990 and RCW 90.70.080; and

(11) Section 14, chapter 451, Laws of 1985 and RCW 90.70.901. [1990 c 115 § 12.]

43.131.371 School directors' association—Termination.

The powers and duties of the school directors' association shall be terminated on June 30, 1998, as provided in RCW 43.131.372. [1990 c 297 § 20.]

43.131.372 School directors' association—Repeal.

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 1999:

(1) Section 28A.61.010, chapter 223, Laws of 1969 ex. sess. and RCW 28A.345.010;

(2) Section 28A.61.020, chapter 223, Laws of 1969 ex. sess. and RCW 28A.345.020;

(3) Section 28A.61.030, chapter 223, Laws of 1969 ex. sess., section 4, chapter 184, Laws of 1969 ex. sess., section 1, chapter 101, Laws of 1974 ex. sess., section 13, chapter 151, Laws of 1979, section 1, chapter 187, Laws of 1983, section 1, chapter 325, Laws of 1989 and RCW 28A.345.030;

(4) Section 28A.61.040, chapter 223, Laws of 1969 ex. sess. and RCW 28A.345.040;

(5) Section 28A.61.050, chapter 223, Laws of 1969 ex. sess., section 2, chapter 125, Laws of 1969, section 2, chapter 187, Laws of 1983 and RCW 28A.345.050; and

(6) Section 4, chapter 187, Laws of 1983, section 3, chapter 158, Laws of 1986 and RCW 28A.345.060. [1990 c 297 § 21.]

43.131.373 Pacific Northwest export assistance project—Termination.

The Pacific Northwest export assistance project shall be terminated on June 30, 1996, as provided in RCW 43.131.374. [1991 c 314 § 17.]

Findings—1991 c 314: See note following RCW 43.31.601.

43.131.374 Pacific Northwest export assistance project—Repeal.

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 1997:

(1) RCW 43.210.100 and 1991 c 314 s 11;

(2) RCW 43.210.110 and 1991 c 314 s 12;

(3) RCW 43.210.120 and 1991 c 314 s 13; and

(4) RCW 43.210.070 and 1991 c 314 s 14. [1991 c 314 § 18.]

Findings—1991 c 314: See note following RCW 43.31.601.

43.131.375 Game fish mitigation—Termination.

The game fish mitigation program created in RCW 77.18.005 through 77.18.030 shall be terminated on June 30, 1994, as provided in RCW 43.131.376. [1991 c 253 § 5.]

43.131.376 Game fish mitigation—Repeal. The following acts, or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 1995:

(1) RCW 77.18.005 and 1991 c 253 s 1;

(2) RCW 77.18.010 and 1991 c 253 s 2;

(3) RCW 77.18.020 and 1991 c 253 s 3; and

(4) RCW 77.18.030 and 1991 c 253 s 4. [1991 c 253 § 6.]

Chapter 43.135**TAX REVENUE LIMITATIONS****Sections**

43.135.060 Prohibition of new or extended programs without reimbursement—Effect of revenue authority and state funding on reimbursement—Transfer of programs—Determination of costs.

43.135.060 Prohibition of new or extended programs without reimbursement—Effect of revenue authority and state funding on reimbursement—Transfer of programs—Determination of costs. (1) The legislature

shall not impose responsibility for new programs or increased levels of service under existing programs on any taxing district unless the districts are reimbursed for the costs thereof by the state.

(2) The amount of increased local revenue and state appropriations and distributions that are received or could be received by a taxing district as a result of legislative enactments after 1979 shall be included as reimbursement under this section. This subsection does not affect litigation pending on January 1, 1990.

(3) If by order of any court, or legislative enactment, the costs of a federal or taxing district program are transferred to or from the state, the otherwise applicable state tax revenue limit shall be increased or decreased, as the case may be, by the dollar amount of the costs of the program.

(4) The legislature, in consultation with the office of financial management or its successor agency, shall determine the costs of any new programs or increased levels of service under existing programs imposed on any taxing district or transferred to or from the state.

(5) Subsection (1) of this section does not apply to the costs incurred for voting devices or machines under RCW 29.04.200. [1990 2nd ex.s. c 1 § 601; 1990 c 184 § 2; 1980 c 1 § 6 (Initiative Measure No. 62, approved November 6, 1979).]

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Chapter 43.140

GEOTHERMAL ENERGY

Sections

- 43.140.030 Geothermal account—Deposit of revenues.
43.140.900 Termination of chapter.

43.140.030 Geothermal account—Deposit of revenues. There is created the geothermal account in the state treasury. All expenditures from this account are subject to appropriation and chapter 43.88 RCW.

All revenues received by the state treasurer under section 35 of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. Sec. 191), with respect to activities of the United States bureau of land management undertaken pursuant to the Geothermal Steam Act of 1970 (30 U.S.C. Sec. 1001 et. seq.) shall be deposited in the geothermal account in the state treasury immediately upon receipt. [1991 1st sp.s. c 13 § 7; 1985 c 57 § 58; 1981 c 158 § 3.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

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

43.140.900 Termination of chapter. This chapter shall terminate on June 30, 2001. [1991 c 76 1; 1981 c 158 § 8.]

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Chapter 43.145

NORTHWEST INTERSTATE COMPACT ON LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT

Sections

- 43.145.020 Requirements of Washington representative to Northwest low-level waste compact committee.

43.145.020 Requirements of Washington representative to Northwest low-level waste compact committee. The person designated as the Washington representative to the committee as specified in Article V shall adhere to all provisions of the low-level radioactive waste compact. In considering special conditions or arrangements for access to the state's facilities from wastes generated outside of the region, the committee member shall ensure at a minimum, that the provisions of Article IV, Section 3 are complied with. After 1992 the Washington representative may approve access to the state's facility only for the states currently members of the Rocky Mountain compact or states which generate less than one thousand cubic feet of waste annually and are contiguous with a state which is a member of the Northwest compact. [1990 c 21 § 5; 1981 c 124 § 2.]

Chapter 43.147

PACIFIC NORTHWEST ECONOMIC REGION AGREEMENT

Sections

- 43.147.010 Terms of agreement.
43.147.020 Finding.
43.147.030 Cooperative activities encouraged.

43.147.010 Terms of agreement. The Pacific Northwest Economic Region is hereby enacted into law and entered into by the state of Washington as a party, and is in full force and effect in accordance with the terms of this agreement.

THE PACIFIC NORTHWEST ECONOMIC REGION

ARTICLE I—Policy and Purpose

States and provinces participating in the Pacific Northwest Economic Region shall seek to develop and establish policies that: Promote greater regional collaboration among the seven entities; enhance the overall competitiveness of the region in international and domestic markets; increase the economic well-being of all citizens in the region; and improve the quality of life of the citizens of the Pacific Northwest.

States and provinces recognize that there are many public policy areas in which cooperation and joint efforts would be mutually beneficial. These areas include, but are not limited to: International trade; economic development; human resources; the environment and natural resources; energy; and education. Parties to this agreement shall work diligently to establish collaborative activity in these and other appropriate policy areas where such cooperation is deemed worthwhile and of benefit to

the participating entities. Participating states and provinces also agree that there are areas in which cooperation may not be feasible.

The substantive actions of the Pacific Northwest Economic Region may take the form of uniform legislation enacted by two or more states and/or provinces or policy initiatives endorsed as appropriate by participating entities. It shall not be necessary for all states and provinces to participate in each initiative.

ARTICLE II—Eligible Parties and Effective Date

Each of the following states and provinces is eligible to become a party to this agreement: Alaska, Alberta, British Columbia, Idaho, Montana, Oregon, and Washington. This agreement establishing the Pacific Northwest Economic Region shall become effective when it is executed by one state, one province, and one additional state and/or province in a form deemed appropriate by each entity. This agreement shall continue in force and remain binding upon each state and province until renounced by it. Renunciation of this agreement must be preceded by sending one year's notice in writing of intention to withdraw from the agreement to the other parties to the agreement.

ARTICLE III—Organizational Structure

Each state and province participating in this agreement shall appoint representatives to the Pacific Northwest Economic Region. The organizational structure of the Pacific Northwest Economic Region shall consist of the following: A delegate council consisting of four legislators from each participating state and four representatives from each participating province and an executive committee consisting of one legislator from each participating state and/or province who is a member of the delegate council. Policy committees may be established to carry out further duties and responsibilities of the Pacific Northwest Economic Region.

ARTICLE IV—Duties and Responsibilities

The delegate council shall have the following duties and responsibilities: Facilitate the involvement of other government officials in the development and implementation of specific collaborative initiatives; work with policy-making committees in the development and implementation of specific initiatives; approve general organizational policies developed by the executive committee; provide final approval of the annual budget and staffing structure for the Pacific Northwest Economic Region developed by the executive committee; and other duties and responsibilities as may be established in the rules and regulations of the Pacific Northwest Economic Region. The executive committee shall perform the following duties and responsibilities: Elect the president and vice-president of the Pacific Northwest Economic Region; approve and implement general organizational policies; develop the annual budget; devise the annual action plan; act as liaison with other public and private sector entities; and other duties and responsibilities established in the rules and regulations of the Pacific Northwest Economic Region. The rules and regulations

of the Pacific Northwest Economic Region shall establish the procedure for voting.

ARTICLE V—Membership of Policy Committees

Policy committees dealing with specific subject matter may be established by the executive committee.

Each participating state and province shall appoint legislators to sit on these committees in accordance with its own rules and regulations concerning such appointments.

ARTICLE VI—General Provisions

This agreement shall not be construed to limit the powers of any state or province or to amend or repeal or prevent the enactment of any legislation. [1991 c 251 § 2.]

43.147.020 Finding. The legislature finds that there is a new emerging global economy in which countries and regions located in specific areas of the world are forging new cooperative arrangements.

The legislature finds that these new cooperative arrangements are increasing the competitiveness of the participating countries and regions, thus increasing the economic benefits and the overall quality of life for the citizens of the individual countries and regions.

The legislature also finds that the Pacific Northwest states of Alaska, Idaho, Montana, Oregon, and Washington and the Canadian provinces of Alberta and British Columbia are in a strategic position to act together, as a region, thus increasing the overall competitiveness of the individual states and provinces that will provide substantial economic benefits for all of their citizens. [1991 c 251 § 1.]

43.147.030 Cooperative activities encouraged. It is the intent of chapter 251, Laws of 1991 to direct and encourage the establishment of cooperative activities between the seven legislative bodies of the region. The state representatives to the Pacific Northwest Economic Region shall work through appropriate channels to advance consideration of proposals developed by this body. [1991 c 251 § 3.]

Chapter 43.155

PUBLIC WORKS PROJECTS

Sections

- 43.155.065 Emergency public works projects.
43.155.070 Eligibility and priority.

43.155.065 Emergency public works projects. The board may make low-interest or interest-free loans to local governments for emergency public works projects. Emergency public works projects shall include the construction, repair, reconstruction, replacement, rehabilitation, or improvement of a public water system that is in violation of health and safety standards and is being operated by a local government on a temporary basis. The loans may be used to help fund all or part of an emergency public works project less any reimbursement from

any of the following sources: (1) Federal disaster or emergency funds, including funds from the federal emergency management agency; (2) state disaster or emergency funds; (3) insurance settlements; or (4) litigation. Emergency loans may be made only from those funds specifically appropriated from the public works assistance account for such purpose by the legislature. The amount appropriated from the public works assistance account for emergency loan purposes shall not exceed five percent of the total amount appropriated from this account in any biennium. [1990 c 133 § 7; 1988 c 93 § 1.]

Findings—Severability—1990 c 133: See notes following RCW 36.94.140.

43.155.070 Eligibility and priority. (1) To qualify for loans or pledges under this chapter the board must determine that a local government meets all of the following conditions:

(a) The city or county must be imposing a tax under chapter 82.46 RCW at a rate of at least one-quarter of one percent;

(b) The local government must have developed a long-term plan for financing public works needs;

(c) The local government must be using all local revenue sources which are reasonably available for funding public works, taking into consideration local employment and economic factors; and

(d) A county, city, or town that is required or chooses to plan under RCW 36.70A.040 must have adopted a comprehensive plan in conformance with the requirements of chapter 36.70A RCW, after it is required that the comprehensive plan be adopted, and must have adopted development regulations in conformance with the requirements of chapter 36.70A RCW, after it is required that development regulations be adopted.

(2) The board shall develop a priority process for public works projects as provided in this section. The intent of the priority process is to maximize the value of public works projects accomplished with assistance under this chapter. The board shall attempt to assure a geographical balance in assigning priorities to projects. The board shall consider at least the following factors in assigning a priority to a project:

(a) Whether the local government receiving assistance has experienced severe fiscal distress resulting from natural disaster or emergency public works needs;

(b) Whether the project is critical in nature and would affect the health and safety of a great number of citizens;

(c) The cost of the project compared to the size of the local government and amount of loan money available;

(d) The number of communities served by or funding the project;

(e) Whether the project is located in an area of high unemployment, compared to the average state unemployment;

(f) Whether the project is the acquisition, expansion, improvement, or renovation by a local government of a public water system that is in violation of health and

safety standards, including the cost of extending existing service to such a system;

(g) The relative benefit of the project to the community, considering the present level of economic activity in the community and the existing local capacity to increase local economic activity in communities that have low economic growth; and

(h) Other criteria that the board considers advisable.

(3) Existing debt or financial obligations of local governments shall not be refinanced under this chapter. Each local government applicant shall provide documentation of attempts to secure additional local or other sources of funding for each public works project for which financial assistance is sought under this chapter.

(4) Before November 1 of each year, the board shall develop and submit to the chairs of the ways and means committees of the senate and house of representatives a description of the emergency loans made under RCW 43.155.065 during the preceding fiscal year and a prioritized list of projects which are recommended for funding by the legislature, including one copy to the staff of each of the committees. The list shall include, but not be limited to, a description of each project and recommended financing, the terms and conditions of the loan or financial guarantee, the local government jurisdiction and unemployment rate, demonstration of the jurisdiction's critical need for the project and documentation of local funds being used to finance the public works project. The list shall also include measures of fiscal capacity for each jurisdiction recommended for financial assistance, compared to authorized limits and state averages, including local government sales taxes; real estate excise taxes; property taxes; and charges for or taxes on sewerage, water, garbage, and other utilities.

(5) The board shall not sign contracts or otherwise financially obligate funds from the public works assistance account before the legislature has appropriated funds for a specific list of public works projects. The legislature may remove projects from the list recommended by the board. The legislature shall not change the order of the priorities recommended for funding by the board.

(6) Subsections (4) and (5) of this section do not apply to loans made for emergency public works projects under RCW 43.155.065. [1991 1st sp.s. c 32 § 23; 1990 1st ex.s. c 17 § 82; 1990 c 133 § 6; 1988 c 93 § 3; 1987 c 505 § 40; 1985 c 446 § 12.]

Section headings not law—1991 1st sp.s. c 32: See RCW 36.70A.902.

Intent—1990 1st ex.s. c 17: See note following RCW 43.210.010.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Findings—Severability—1990 c 133: See notes following RCW 36.94.140.

Chapter 43.160

ECONOMIC DEVELOPMENT—PUBLIC FACILITIES LOANS AND GRANTS

Sections

43.160.010	Legislative declaration.
43.160.020	Definitions.

- 43.160.060 Loans and grants to political subdivisions for public facilities authorized—Application—Requirements for grants and loans.
- 43.160.070 Conditions.
- 43.160.076 Grants and loans in distressed counties. (Effective until June 30, 1993.)
- 43.160.076 Repealed. (Effective June 30, 1993.)
- 43.160.080 Public facilities construction loan revolving account.
- 43.160.200 Economic development account—Timber impact areas. (Expires June 30, 1993.)
- 43.160.210 Distressed counties—Twenty percent of loans and grants. (Effective July 1, 1993.)

43.160.010 Legislative declaration. (1) The legislature finds that it is the public policy of the state of Washington to direct financial resources toward the fostering of economic development through the stimulation of investment and job opportunities and the retention of sustainable existing employment for the general welfare of the inhabitants of the state. Reducing unemployment and reducing the time citizens remain jobless is important for the economic welfare of the state. A valuable means of fostering economic development is the construction of public facilities which contribute to the stability and growth of the state's economic base. Strengthening the economic base through issuance of industrial development bonds, whether single or umbrella, further serves to reduce unemployment. Consolidating issues of industrial development bonds when feasible to reduce costs additionally advances the state's purpose to improve economic vitality. Expenditures made for these purposes as authorized in this chapter are declared to be in the public interest, and constitute a proper use of public funds. A community economic revitalization board is needed which shall aid the development of economic opportunities. The general objectives of the board should include:

(a) Strengthening the economies of areas of the state which have experienced or are expected to experience chronically high unemployment rates or below average growth in their economies;

(b) Encouraging the diversification of the economies of the state and regions within the state in order to provide greater seasonal and cyclical stability of income and employment;

(c) Encouraging wider access to financial resources for both large and small industrial development projects;

(d) Encouraging new economic development or expansions to maximize employment;

(e) Encouraging the retention of viable existing firms and employment; and

(f) Providing incentives for expansion of employment opportunities for groups of state residents that have been less successful relative to other groups in efforts to gain permanent employment.

(2) The legislature also finds that the state's economic development efforts can be enhanced by, in certain instances, providing funds to improve state highways in the vicinity of new industries considering locating in this state or existing industries that are considering significant expansion.

(a) The legislature finds it desirable to provide a process whereby the need for diverse public works improvements necessitated by planned economic development can be addressed in a timely fashion and with coordination among all responsible governmental entities.

(b) It is the intent of the legislature to create an economic development account within the motor vehicle fund from which expenditures can be made by the department of transportation for state highway improvements necessitated by planned economic development. All such improvements must first be approved by the state transportation commission and the community economic revitalization board in accordance with the procedures established by RCW 43.160.074 and 47.01.280. It is further the intent of the legislature that such improvements not jeopardize any other planned highway construction projects. The improvements are intended to be of limited size and cost, and to include such items as additional turn lanes, signalization, illumination, and safety improvements.

(3) The legislature also finds that the state's economic development efforts can be enhanced by providing funds to improve markets for those recyclable materials representing a large fraction of the waste stream. The legislature finds that public facilities which result in private construction of processing or remanufacturing facilities for recyclable materials are eligible for consideration from the board.

(4) The legislature finds that sharing economic growth state-wide is important to the welfare of the state. Timber impact areas do not share in the economic vitality of the Puget Sound region. Infrastructure is one of several ingredients that are critical for economic development. Timber impact areas generally lack the infrastructure necessary to diversify and revitalize their economies. It is, therefore, the intent of the legislature to increase the availability of funds to help provide infrastructure to timber impact areas. [1991 c 314 § 21; 1989 c 431 § 61; 1987 c 422 § 1; 1984 c 257 § 1; 1982 1st ex.s. c 40 § 1.]

Findings—1991 c 314: See note following RCW 43.31.601.

Severability—Section captions not law—1989 c 431: See RCW 70.95.901 and 70.95.902.

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

(1) "Board" means the community economic revitalization board.

(2) "Bond" means any bond, note, debenture, interim certificate, or other evidence of financial indebtedness issued by the board pursuant to this chapter.

(3) "Department" means the department of trade and economic development or its successor with respect to the powers granted by this chapter.

(4) "Financial institution" means any bank, savings and loan association, credit union, development credit corporation, insurance company, investment company, trust company, savings institution, or other financial institution approved by the board and maintaining an office in the state.

(5) "Industrial development facilities" means "industrial development facilities" as defined in RCW 39.84.020.

(6) "Industrial development revenue bonds" means tax-exempt revenue bonds used to fund industrial development facilities.

(7) "Local government" means any port district, county, city, or town.

(8) "Sponsor" means any of the following entities which customarily provide service or otherwise aid in industrial or other financing and are approved as a sponsor by the board: A bank, trust company, savings bank, investment bank, national banking association, savings and loan association, building and loan association, credit union, insurance company, or any other financial institution, governmental agency, or holding company of any entity specified in this subsection.

(9) "Umbrella bonds" means industrial development revenue bonds from which the proceeds are loaned, transferred, or otherwise made available to two or more users under this chapter.

(10) "User" means one or more persons acting as lessee, purchaser, mortgagor, or borrower under a financing document and receiving or applying to receive revenues from bonds issued under this chapter.

(11) "Timber impact area" means a county having a population of less than five hundred thousand, or a city or town located within a county having a population of less than five hundred thousand, and meeting two of the following three criteria, as determined by the employment security department, for the most recent year such data is available: (a) A lumber and wood products employment location quotient at or above the state average; (b) projected or actual direct lumber and wood products job losses of one hundred positions or more, except counties having a population greater than two hundred thousand but less than five hundred thousand must have direct lumber and wood products job losses of one thousand positions or more; or (c) an annual unemployment rate twenty percent or more above the state average. [1991 c 314 § 22; 1985 c 466 § 58; 1985 c 6 § 12; 1984 c 257 § 2; 1983 1st ex.s. c 60 § 1; 1982 1st ex.s. c 40 § 2.]

Findings—1991 c 314: See note following RCW 43.31.601.

Effective date—**Severability**—1985 c 466: See notes following RCW 43.31.005.

43.160.060 Loans and grants to political subdivisions for public facilities authorized—Application—Requirements for grants and loans. The board is authorized to make direct loans to political subdivisions of the state for the purposes of assisting the political subdivisions in financing the cost of public facilities, including development of land and improvements for public facilities, as well as the acquisition, construction, rehabilitation, alteration, expansion, or improvement of the facilities. A grant may also be authorized for purposes designated in this chapter, but only when, and to the extent that, a loan is not reasonably possible, given the limited resources of the political subdivision.

[1990–91 RCW Supp—page 1076]

Application for funds shall be made in the form and manner as the board may prescribe. In making grants or loans the board shall conform to the following requirements:

(1) The board shall not make a grant or loan:

(a) For a project the primary purpose of which is to facilitate or promote a retail shopping development or expansion.

(b) For any project that evidence exists would result in a development or expansion that would displace existing jobs in any other community in the state.

(c) For the acquisition of real property, including buildings and other fixtures which are a part of real property.

(2) The board shall only make grants or loans:

(a) For those projects which would result in specific private developments or expansions (i) in manufacturing, production, food processing, assembly, warehousing, and industrial distribution; (ii) for processing recyclable materials or for facilities that support recycling, including processes not currently provided in the state, including but not limited to, de-inking facilities, mixed waste paper, plastics, yard waste, and problem-waste processing; (iii) for manufacturing facilities that rely significantly on recyclable materials, including but not limited to waste tires and mixed waste paper; (iv) which support the relocation of businesses from nondistressed urban areas to distressed rural areas; or (v) which substantially support the trading of goods or services outside of the state's borders.

(b) For projects which it finds will improve the opportunities for the successful maintenance, establishment, or expansion of industrial or commercial plants or will otherwise assist in the creation or retention of long-term economic opportunities.

(c) When the application includes convincing evidence that a specific private development or expansion is ready to occur and will occur only if the grant or loan is made.

(3) The board shall prioritize each proposed project according to the relative benefits provided to the community by the jobs the project would create, not just the total number of jobs it would create after the project is completed and according to the unemployment rate in the area in which the jobs would be located. As long as there is more demand for loans or grants than there are funds available for loans or grants, the board is instructed to fund projects in order of their priority.

(4) A responsible official of the political subdivision shall be present during board deliberations and provide information that the board requests.

Before any loan or grant application is approved, the political subdivision seeking the loan or grant must demonstrate to the community economic revitalization board that no other timely source of funding is available to it at costs reasonably similar to financing available from the community economic revitalization board. [1990 1st ex.s. c 17 § 73; 1989 c 431 § 62; 1987 c 422 § 5; 1985 c 446 § 3; 1983 1st ex.s. c 60 § 3; 1982 1st ex.s. c 40 § 6.]

Intent—1990 1st ex.s. c 17: See note following RCW 43.210.010.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Severability—Section captions not law—1989 c 431: See RCW 70.95.901 and 70.95.902.

43.160.070 Conditions. (1) Public facilities loans and grants, when authorized by the board, are subject to the following conditions:

(a) The moneys in the public facilities construction loan revolving fund shall be used solely to fulfill commitments arising from loans or grants authorized in this chapter or, during the 1989–91 fiscal biennium, for economic development purposes as appropriated by the legislature. The total outstanding amount which the board shall dispense at any time pursuant to this section shall not exceed the moneys available from the fund. The total amount of outstanding loans and grants in Pierce, King, and Snohomish counties shall never exceed sixty percent of the total amount of outstanding loans and grants disbursed by the board.

(b) Financial assistance through the loans or grants may be used directly or indirectly for any facility for public purposes, including, but not limited to, sewer or other waste disposal facilities, arterials, bridges, access roads, port facilities, or water distribution and purification facilities.

(c) On contracts made for public facilities loans the board shall determine the interest rate which loans shall bear. The interest rate shall not exceed ten percent per annum. The board may provide reasonable terms and conditions for repayment for loans as the board determines. The loans shall not exceed twenty years in duration.

(d) Repayments of loans made under the contracts for public facilities construction loans shall be paid into the public facilities construction loan revolving fund.

(2) When every feasible effort has been made to provide loans and loans are not possible, the board may provide grants upon finding that unique circumstances exist. [1990 1st ex.s. c 16 § 802; 1983 1st ex.s. c 60 § 4; 1982 1st ex.s. c 40 § 7.]

Severability—1990 1st ex.s. c 16: "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." [1990 1st ex.s. c 16 § 803.]

43.160.076 Grants and loans in distressed counties. (Effective until June 30, 1993.) (1) Except as authorized to the contrary under subsection (2) of this section, from all funds available to the board for loans and grants, the board shall spend at least fifty percent for grants and loans for projects in distressed counties or timber impact areas. For purposes of this section, the term "distressed counties" includes any county, in which the average level of unemployment for the three years before the year in which an application for a loan or grant is filed, exceeds the average state employment for those years by twenty percent.

(2) If at any time during the last six months of a biennium the board finds that the actual and anticipated applications for qualified projects in distressed counties or timber impact areas are clearly insufficient to use up

the fifty percent allocation, then the board shall estimate the amount of the insufficiency and during the remainder of the biennium may use that amount of the allocation for loans and grants for projects not located in distressed counties or timber impact areas. [1991 c 314 § 24; 1985 c 446 § 6.]

Findings—1991 c 314: See note following RCW 43.31.601.

43.160.076 Repealed. (Effective June 30, 1993.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.160.080 Public facilities construction loan revolving account. There shall be a fund known as the public facilities construction loan revolving account, which shall consist of all moneys collected under this chapter, except moneys of the board collected in connection with the issuance of industrial development revenue bonds, and any moneys appropriated to it by law: PROVIDED, That seventy-five percent of all principal and interest payments on loans made with the proceeds deposited in the account under section 901, chapter 57, Laws of 1983 1st ex. sess. shall be deposited in the general fund as reimbursement for debt service payments on the bonds authorized in RCW 43.83.184. The state treasurer shall be custodian of the revolving account. Disbursements from the revolving account shall be on authorization of the board. In order to maintain an effective expenditure and revenue control, the public facilities construction loan revolving account shall be subject in all respects to chapter 43.88 RCW, but no appropriation is required to permit expenditures and payment of obligations from the account. [1991 1st sp.s. c 13 § 115; 1987 c 422 § 6; 1984 c 257 § 12; 1983 1st ex.s. c 60 § 6; 1982 1st ex.s. c 40 § 8.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

43.160.200 Economic development account—Timber impact areas. (Expires June 30, 1993.) (1) The economic development account is created within the public facilities construction loan revolving fund under RCW 43.160.080. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes of RCW 43.160.010(4) and this section. The account is subject to allotment procedures under chapter 43.88 RCW.

(2) Applications under this section for assistance from the economic development account are subject to all of the applicable criteria set forth under this chapter, as well as procedures and criteria established by the board, except as otherwise provided.

(3) Eligible applicants under this section are limited to political subdivisions of the state in timber impact areas that demonstrate, to the satisfaction of the board, the local economy's dependence on the forest products industry.

(4) Applicants must demonstrate that their request is part of an economic development plan consistent with applicable state planning requirements. Applicants must demonstrate that tourism projects have been approved

by the local government and are part of a regional tourism plan approved by the local and regional tourism organizations. Industrial projects must be approved by the local government and the associate development organization.

(5) Publicly owned projects may be financed under this section upon proof by the applicant that the public project is a necessary component of, or constitutes in whole, a tourism project.

(6) Applications must demonstrate local match and participation. Such match may include: Land donation, other public or private funds or both, or other means of local commitment to the project.

(7) Board financing for feasibility studies shall not exceed twenty-five thousand dollars per study. Board funds for feasibility studies may be provided as a grant and require a dollar for dollar match with up to one-half in-kind match allowed.

(8) Board financing for tourism projects shall not exceed two hundred fifty thousand dollars. Other public facility projects under this section shall not exceed five hundred thousand dollars. Loans with flexible terms and conditions to meet the needs of the applicants shall be provided. Grants may also be authorized, but only when, and to the extent that, a loan is not reasonably possible, given the limited resources of the political subdivision.

(9) The board shall develop guidelines for allowable local match and feasibility studies.

(10) Applications under this section need not demonstrate evidence that specific private development or expansion is ready to occur or will occur if funds are provided.

(11) The board shall establish guidelines for making grants and loans under this section to ensure that the requirements of this chapter are complied with. The guidelines shall include:

(a) A process to equitably compare and evaluate applications from competing communities.

(b) Criteria to ensure that approved projects will have a high probability of success and are likely to provide long-term economic benefits to the community. The criteria shall include: (i) A minimum amount of local participation, determined by the board per application, to verify community support for the project; (ii) an analysis that establishes the project is feasible using standard economic principles; and (iii) an explanation from the applicant regarding how the project is consistent with the communities' economic strategy and goals.

(c) A method of evaluating the impact of the loans or grants on the economy of the community and whether the loans or grants achieved their purpose. [1991 c 314 § 23.]

Expiration date—1991 c 314 § 23: "Section 23 of this act expires June 30, 1993." [1991 c 314 § 33.]

Findings—1991 c 314: See note following RCW 43.31.601.

43.160.210 Distressed counties—Twenty percent of loans and grants. (Effective July 1, 1993.) (1) Except as authorized to the contrary under subsection (2) of this section, from all funds available to the board for

loans and grants, the board shall spend at least twenty percent for grants and loans for projects in distressed counties. For purposes of this section, the term "distressed counties" includes any county, in which the average level of unemployment for the three years before the year in which an application for a loan or grant is filed, exceeds the average state employment for those years by twenty percent.

(2) If at any time during the last six months of a biennium the board finds that the actual and anticipated applications for qualified projects in distressed counties are clearly insufficient to use up the twenty percent allocation, then the board shall estimate the amount of the insufficiency and during the remainder of the biennium may use that amount of the allocation for loans and grants for projects not located in distressed counties. [1991 c 314 § 25.]

Effective date—1991 c 314 § 25: "Section 25 of this act shall take effect July 1, 1993." [1991 c 314 § 34.]

Findings—1991 c 314: See note following RCW 43.31.601.

Chapter 43.163

ECONOMIC DEVELOPMENT FINANCE AUTHORITY

Sections

43.163.005	Purpose—Construction.
43.163.020	Economic development finance authority created—Membership.
43.163.050	Pooling of loans.
43.163.070	Use of funds.
43.163.080	General operating procedures.
43.163.100	Powers of the authority.

43.163.005 Purpose—Construction. Economic development is essential to the health, safety, and welfare of all Washington citizens by broadening and strengthening state and local tax bases, providing meaningful employment opportunities and thereby enhancing the quality of life. Economic development increasingly is dependent upon the ability of small-sized and medium-sized businesses and farms to finance growth and trade activities. Many of these businesses face an unmet need for capital that limits their growth. These unmet capital needs are a problem in both urban and rural areas which cannot be solved by the private sector alone. There presently exist some federal programs, private credit enhancements and other financial tools to complement the private banking industry in providing this needed capital. More research is needed to develop effective strategies to enhance access to capital and thereby stimulate economic development.

It is the purpose of this chapter to establish a state economic development finance authority to act as a financial conduit that, without using state funds or lending the credit of the state or local governments, can issue nonrecourse revenue bonds, and participate in federal, state, and local economic development programs to help facilitate access to needed capital by Washington businesses that cannot otherwise readily obtain needed capital on terms and rates comparable to large corporations,

and can help local governments obtain capital more efficiently. It is also a primary purpose of this chapter to encourage the employment and retention of Washington workers at meaningful wages and to develop innovative approaches to the problem of unmet capital needs. This chapter is enacted to accomplish these and related purposes and shall be construed liberally to carry out its purposes and objectives. [1990 c 53 § 1; 1989 c 279 § 1.]

43.163.020 Economic development finance authority created—Membership. The Washington economic development finance authority is established as a public body corporate and politic, with perpetual corporate succession, constituting an instrumentality of the state of Washington exercising essential governmental functions. The authority is a public body within the meaning of RCW 39.53.010.

The authority shall consist of eighteen members as follows: The director of the department of trade and economic development, the director of the department of community development, the director of the department of agriculture, the state treasurer, one member from each caucus in the house of representatives appointed by the speaker of the house, one member from each caucus in the senate appointed by the president of the senate, and ten public members with one representative of women-owned businesses and one representative of minority-owned businesses and with at least three of the members residing east of the Cascades. The public members shall be residents of the state appointed by the governor on the basis of their interest or expertise in trade, agriculture or business finance or jobs creation and development. One of the public members shall be appointed by the governor as chair of the authority and shall serve as chair of the authority at the pleasure of the governor. The authority may select from its membership such other officers as it deems appropriate.

The term of the persons appointed by the governor as public members of the authority, including the public member appointed as chair, shall be four years from the date of appointment, except that the term of three of the initial appointees shall be for two years from the date of appointment and the term of four of the initial appointees shall be for three years from the date of appointment. The governor shall designate the appointees who will serve the two-year and three-year terms.

In the event of a vacancy on the authority due to death, resignation or removal of one of the public members, or upon the expiration of the term of one of the public members, the governor shall appoint a successor for the remainder of the unexpired term. If either of the state offices is abolished, the resulting vacancy on the authority shall be filled by the state officer who shall succeed substantially to the power and duties of the abolished office.

Any public member of the authority may be removed by the governor for misfeasance, malfeasance or willful neglect of duty after notice and a public hearing, unless such notice and hearing shall be expressly waived in writing by the affected public member.

The state officials serving in ex officio capacity may each designate an employee of their respective departments to act on their behalf in all respects with regard to any matter to come before the authority. Such designations shall be made in writing in such manner as is specified by the rules of the authority.

The members of the authority shall serve without compensation but shall be entitled to reimbursement, solely from the funds of the authority, for expenses incurred in the discharge of their duties under this chapter. The authority may borrow funds from the department for the purpose of reimbursing members for expenses; however, the authority shall repay the department as soon as practicable.

A majority of the authority shall constitute a quorum. [1990 c 53 § 2; 1989 c 279 § 3.]

43.163.050 Pooling of loans. The authority is authorized to develop and conduct a program or programs to promote small business and agricultural financing in the state through the pooling of loans or portions of loans made or guaranteed through programs administered by federal agencies including the small business or farmers home administrations. For such purpose, the authority may acquire from eligible banking organizations and other financial intermediaries who make or hold loans made or guaranteed through programs administered by the federal small business or farmers home administrations all or portions of such loans, and the authority may contract or coordinate with parties authorized to acquire or pool loans made or guaranteed by a federal agency or with parties authorized to administer such loan or guarantee programs. [1990 c 53 § 3; 1989 c 279 § 6.]

43.163.070 Use of funds. The authority may use any funds legally available to it for any purpose specifically authorized by this chapter, or for otherwise improving economic development in this state by assisting businesses and farm enterprises that do not have access to capital at terms and rates comparable to large corporations due to the location of the business, the size of the business, the lack of financial expertise, or other appropriate reasons: PROVIDED, That no funds of the state shall be used for such purposes. [1990 c 53 § 4; 1989 c 279 § 8.]

43.163.080 General operating procedures. (1) The authority shall adopt general operating procedures for the authority. The authority shall also adopt operating procedures for individual programs as they are developed for obtaining funds and for providing funds to borrowers. These operating procedures shall be adopted by resolution prior to the authority operating the applicable programs.

(2) The operating procedures shall include, but are not limited to: (a) Appropriate minimum reserve requirements to secure the authority's bonds and other obligations; (b) appropriate standards for securing loans and other financing the authority provides to borrowers, such as guarantees or collateral; and (c) appropriate standards for providing financing to borrowers, such as

(i) the borrower is a responsible party with a high probability of being able to repay the financing provided by the authority, (ii) the financing is reasonably expected to provide economic growth or stability in the state by enabling a borrower to increase or maintain jobs or capital in the state, (iii) the borrowers with the greatest needs or that provide the most public benefit are given higher priority by the authority, and (iv) the financing is consistent with any plan adopted by the authority under RCW 43.163.090. [1990 c 53 § 5; 1989 c 279 § 9.]

43.163.100 Powers of the authority. In addition to accomplishing the economic development finance programs specifically authorized in this chapter, the authority may:

- (1) Maintain an office or offices;
- (2) Sue and be sued in its own name, and plead and be impleaded;
- (3) Engage consultants, agents, attorneys, and advisers, contract with federal, state, and local governmental entities for services, and hire such employees, agents and other personnel as the authority deems necessary, useful, or convenient to accomplish its purposes;
- (4) Make and execute all manner of contracts, agreements and instruments and financing documents with public and private parties as the authority deems necessary, useful, or convenient to accomplish its purposes;
- (5) Acquire and hold real or personal property, or any interest therein, in the name of the authority, and to sell, assign, lease, encumber, mortgage, or otherwise dispose of the same in such manner as the authority deems necessary, useful, or convenient to accomplish its purposes;
- (6) Open and maintain accounts in qualified public depositories and otherwise provide for the investment of any funds not required for immediate disbursement, and provide for the selection of investments;
- (7) Appear in its own behalf before boards, commissions, departments, or agencies of federal, state, or local government;
- (8) Procure such insurance in such amounts and from such insurers as the authority deems desirable, including, but not limited to, insurance against any loss or damage to its property or other assets, public liability insurance for injuries to persons or property, and directors and officers liability insurance;
- (9) Apply for and accept subventions, grants, loans, advances, and contributions from any source of money, property, labor, or other things of value, to be held, used and applied as the authority deems necessary, useful, or convenient to accomplish its purposes;
- (10) Establish guidelines for the participation by eligible banking organizations in programs conducted by the authority under this chapter;
- (11) Act as an agent, by agreement, for federal, state, or local governmental entities to carry out the programs authorized in this chapter;
- (12) Establish, revise, and collect such fees and charges as the authority deems necessary, useful, or convenient to accomplish its purposes;

(13) Make such expenditures as are appropriate for paying the administrative costs and expenses of the authority in carrying out the provisions of this chapter: **PROVIDED**, That expenditures with respect to the economic development financing programs of the authority shall not be made from funds of the state;

(14) Establish such reserves and special funds, and controls on deposits to and disbursements from them, as the authority deems necessary, useful, or convenient to accomplish its purposes;

(15) Give assistance to public bodies by providing information, guidelines, forms, and procedures for implementing their financing programs;

(16) Prepare, publish and distribute, with or without charge, such studies, reports, bulletins, and other material as the authority deems necessary, useful, or convenient to accomplish its purposes;

(17) Delegate any of its powers and duties if consistent with the purposes of this chapter;

(18) Adopt rules concerning its exercise of the powers authorized by this chapter; and

(19) Exercise any other power the authority deems necessary, useful, or convenient to accomplish its purposes and exercise the powers expressly granted in this chapter. [1990 c 53 § 6; 1989 c 279 § 11.]

Chapter 43.168

WASHINGTON STATE DEVELOPMENT LOAN FUND COMMITTEE

Sections

43.168.020	Definitions.
43.168.050	Application approval—Conditions and limitations.
43.168.140	Timber impact areas.

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

(1) "Committee" means the Washington state development loan fund committee.

(2) "Department" means the department of community development.

(3) "Director" means the director of the department of community development.

(4) "Distressed area" means: (a) A county which has an unemployment rate which is twenty percent above the state average for the immediately previous three years; (b) a metropolitan statistical area, as defined by the office of federal statistical policy and standards, United States department of commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under this chapter exceeds the average state unemployment for such calendar year by twenty percent. Applications under this subsection (4)(b) shall be filed by April 30, 1989; (c) an area within a county, which area: (i) Is composed of contiguous census tracts; (ii) has a minimum population of five thousand persons; (iii) has at least seventy percent of its families and unrelated individuals with incomes below eighty percent of the county's median income for families and unrelated

individuals; and (iv) has an unemployment rate which is at least forty percent higher than the county's unemployment rate; or (d) a county designated as a timber impact area under RCW 43.31.601 if an application is filed by July 1, 1993. For purposes of this definition, "families and unrelated individuals" has the same meaning that is ascribed to that term by the federal department of housing and urban development in its regulations authorizing action grants for economic development and neighborhood revitalization projects.

(5) "Fund" means the Washington state development loan fund.

(6) "Local development organization" means a non-profit organization which is organized to operate within an area, demonstrates a commitment to a long-standing effort for an economic development program, and makes a demonstrable effort to assist in the employment of unemployed or underemployed residents in an area.

(7) "Project" means the establishment of a new or expanded business in an area which when completed will provide employment opportunities. "Project" also means the retention of an existing business in an area which when completed will provide employment opportunities. [1991 c 314 § 19; 1988 c 42 § 18; 1987 c 461 § 2; 1985 c 164 § 2.]

Findings—1991 c 314: See note following RCW 43.31.601.

Severability—1988 c 42: See note following RCW 4.24.480.

43.168.050 Application approval—Conditions and limitations. (1) The committee may only approve an application providing a loan for a project which the committee finds:

(a) Will result in the creation of employment opportunities or the maintenance of threatened employment;

(b) Has been approved by the director as conforming to federal rules and regulations governing the spending of federal community development block grant funds;

(c) Will be of public benefit and for a public purpose, and that the benefits, including increased or maintained employment, improved standard of living, and the employment of disadvantaged workers, will primarily accrue to residents of the area;

(d) Will probably be successful;

(e) Would probably not be completed without the loan because other capital or financing at feasible terms is unavailable or the return on investment is inadequate.

(2) The committee shall, subject to federal block grant criteria, give higher priority to economic development projects that contain provisions for child care.

(3) The committee may not approve an application if it fails to provide for adequate reporting or disclosure of financial data to the committee. The committee may require an annual or other periodic audit of the project books.

(4) The committee may require that the project be managed in whole or in part by a local development organization and may prescribe a management fee to be paid to such organization by the recipient of the loan or grant.

(5)(a) Except as provided in (b) of this subsection, the committee shall not approve any application which would result in a loan or grant in excess of three hundred fifty thousand dollars.

(b) The committee may approve an application which results in a loan or grant of up to seven hundred thousand dollars if the application has been approved by the director.

(6) The committee shall fix the terms and rates pertaining to its loans.

(7) Should there be more demand for loans than funds available for lending, the committee shall provide loans for those projects which will lead to the greatest amount of employment or benefit to a community. In determining the "greatest amount of employment or benefit" the committee shall also consider the employment which would be saved by its loan and the benefit relative to the community, not just the total number of new jobs or jobs saved.

(8) To the extent permitted under federal law the committee shall require applicants to provide for the transfer of all payments of principal and interest on loans to the Washington state development loan fund created under this chapter. Under circumstances where the federal law does not permit the committee to require such transfer, the committee shall give priority to applications where the applicants on their own volition make commitments to provide for the transfer.

(9) The committee shall not approve any application to finance or help finance a shopping mall.

(10) The committee shall make at least eighty percent of the appropriated funds available to projects located in distressed areas, and may make up to twenty percent available to projects located in areas not designated as distressed. The committee shall not make funds available to projects located in areas not designated as distressed if the fund's net worth is less than seven million one hundred thousand dollars.

(11) If an objection is raised to a project on the basis of unfair business competition, the committee shall evaluate the potential impact of a project on similar businesses located in the local market area. A grant may be denied by the committee if a project is not likely to result in a net increase in employment within a local market area. [1990 1st ex.s. c 17 § 74; 1989 c 430 § 9; 1987 c 461 § 4; 1986 c 204 § 2; 1985 c 164 § 5.]

Intent—1990 1st ex.s. c 17: See note following RCW 43.210.010.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Legislative findings—**Severability**—1989 c 430: See notes following RCW 43.31.502.

43.168.140 Timber impact areas. Any funds appropriated by the legislature to the development loan fund for purposes of the timber recovery act shall be used for development loans in timber impact areas as defined in RCW 43.31.601. [1991 c 314 § 20.]

Findings—1991 c 314: See note following RCW 43.31.601.

Chapter 43.180

HOUSING FINANCE COMMISSION

Sections

43.180.020 Definitions.

NONPROFIT CORPORATION FACILITIES

43.180.300 Definitions.

43.180.310 Commission powers.

43.180.320 Revenue bonds.

43.180.330 Revenue refunding bonds.

43.180.340 Trust agreements.

43.180.350 Lessees or assignees.

43.180.360 Default.

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

(1) "Bonds" means the bonds, notes, or other evidences of indebtedness of the commission, the interest paid on which may or may not qualify for tax exemption.

(2) "Code" means the federal internal revenue code of 1954, as now or hereafter amended, and the regulations and rulings promulgated thereunder.

(3) "Commission" means the Washington state housing finance commission or any board, body, commission, department, or officer succeeding to the principal functions thereof or to whom the powers conferred upon the commission shall be given by law.

(4) "Costs of housing" means all costs related to the development, design, acquisition, construction, reconstruction, leasing, rehabilitation, and other improvements of housing, as determined by the commission.

(5) "Eligible person" means a person or family eligible in accordance with standards promulgated by the commission. Such persons shall include those persons whose income is insufficient to obtain at a reasonable cost, without financial assistance, decent, safe, and sanitary housing in the area in which the person or family resides, and may include such other persons whom the commission determines to be eligible.

(6) "Housing" means specific new, existing, or improved residential dwellings within this state or dwellings to be constructed within this state. The term includes land, buildings, and manufactured dwellings, and improvements, furnishings, and equipment, and such other nonhousing facilities, furnishings, equipment, and costs as may be incidental or appurtenant thereto if in the judgment of the commission the facilities, furnishings, equipment and costs are an integral part of the project. Housing may consist of single-family or multifamily dwellings in one or more structures located on contiguous or noncontiguous parcels or any combination thereof. Improvements may include such equipment and materials as are appropriate to accomplish energy efficiency within a dwelling. The term also includes a dwelling constructed by a person who occupies and owns the dwelling, and nursing homes licensed under chapter 18.51 RCW.

(7) "Mortgage" means a mortgage, mortgage deed, deed of trust, security agreement, or other instrument securing a mortgage loan and constituting a lien on or

security interest in housing. The property may be held in fee simple or on a leasehold under a lease having a remaining term, at the time the mortgage is acquired, of not less than the term of repayment of the mortgage loan secured by the mortgage. The property may also be housing which is evidenced by an interest in a cooperative association or corporation if ownership of the interest entitles the owner of the interest to occupancy of a dwelling owned by the association or corporation.

(8) "Mortgage lender" means any of the following entities which customarily provide service or otherwise aid in the financing of housing and which are approved as a mortgage lender by the commission: A bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, mortgage company, credit union, life insurance company, or any other financial institution, governmental agency, municipal corporation, or any holding company for any of the entities specified in this subsection.

(9) "Mortgage loan" means an interest-bearing loan or a participation therein, made to a borrower, for the purpose of financing the costs of housing, evidenced by a promissory note, and which may or may not be secured (a) under a mortgage agreement, (b) under any other security agreement, regardless of whether the collateral is personal or real property, or (c) by insurance or a loan guarantee of a third party. However, an unsecured loan shall not be considered a mortgage loan under this definition unless the amount of the loan is under two thousand five hundred dollars. [1990 c 167 § 1; 1983 c 161 § 2.]

NONPROFIT CORPORATION FACILITIES

43.180.300 Definitions. As used in RCW 43.180.310 through 43.180.360, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Construction" or "construct" means construction and acquisition, whether by device, purchase, gift, lease, or otherwise.

(2) "Facilities" means land, rights in land, buildings, structures, equipment, landscaping, utilities, approaches, roadways and parking, handling and storage areas, and similar ancillary facilities.

(3) "Financing document" means a lease, sublease, installment sale agreement, conditional sale agreement, loan agreement, mortgage, deed of trust guaranty agreement, or other agreement for the purpose of providing funds to pay or secure debt service on revenue bonds.

(4) "Improvement" means reconstruction, remodeling, rehabilitation, extension, and enlargement. "To improve" means to reconstruct, to remodel, to rehabilitate, to extend, and to enlarge.

(5) "Nonprofit corporation" means a nonprofit corporation described under section 501(c)(3) of the Internal Revenue Code, or similar successor provisions.

(6) "Nonprofit facilities" means facilities owned or used by a nonprofit corporation for any nonprofit activity described under section 501(c)(3) of the Internal

Revenue Code that qualifies such a corporation for an exemption from federal income taxes under section 501(a) of the Internal Revenue Code, or similar successor provisions provided that facilities which may be funded pursuant to chapter 28B.07, 35.82, 43.180, or 70.37 RCW shall not be included in this definition.

(7) "Project costs" means costs of (a) acquisition, construction, and improvement of any facilities included in a nonprofit facility; (b) architectural, engineering, consulting, accounting, and legal costs related directly to the development, financing, and construction of a nonprofit facility, including costs of studies assessing the feasibility of a nonprofit facility; (c) finance costs, including discounts, if any, the costs of issuing revenue bonds, and costs incurred in carrying out any trust agreement; (d) interest during construction and during the six months after estimated completion of construction, and capitalized debt service or repair and replacement or other appropriate reserves; (e) the refunding of any outstanding obligations incurred for any of the costs outlined in this subsection; and (f) other costs incidental to any of the costs listed in this section.

(8) "Revenue bond" means a taxable or tax-exempt nonrecourse revenue bond, nonrecourse revenue note, or other nonrecourse revenue obligation issued for the purpose of providing financing to a nonprofit corporation on an interim or permanent basis.

(9) "User" means one or more persons acting as lessee, purchaser, mortgagor, or borrower under a financing document and may include a party who transfers the right of use and occupancy to another party by lease, sublease, or otherwise. [1990 c 167 § 2.]

43.180.310 Commission powers. The commission has the following powers with respect to nonprofit facilities together with all powers incidental thereto or necessary for the performance thereof:

(1) To make secured loans to nonprofit corporations for the purpose of providing temporary or permanent financing or refinancing of all or part of the project cost of any nonprofit facility, including the refunding of any outstanding obligations, mortgages, or advances issued, made, or given by any person for the project costs of a nonprofit corporation; and to charge and collect interest on the loans for the loan payments upon such terms and conditions as its commissioners consider advisable which are not in conflict with this subchapter;

(2) To issue revenue bonds for the purpose of financing all or part of the project cost of any nonprofit facility and to secure the payment of the revenue bonds as provided in this subchapter;

(3) To collect fees or charges from users or prospective users of nonprofit facilities to recover actual or anticipated administrative costs;

(4) To execute financing documents incidental to the powers enumerated in this section;

(5) To accept grants and gifts;

(6) To establish such special funds with any financial institution providing fiduciary services within or without the state as it deems necessary and appropriate and invest money therein. [1990 c 167 § 3.]

43.180.320 Revenue bonds. (1) The proceeds of the revenue bonds of each issue shall be used solely for the purposes set forth in this subchapter and shall be disbursed in such manner and under such restrictions, if any, provided in the resolution authorizing the issuance of the revenue bonds or in the trust agreement securing the bonds. If the proceeds of the revenue bonds of any series issued with respect to the cost of any nonprofit facility exceeds the cost of the nonprofit facility for which issued, the surplus shall be deposited to the credit of the debt service fund for the revenue bonds or used to purchase the revenue bonds in the open market.

(2) The commission may issue interim notes in the manner provided for the issuance of revenue bonds to fund nonprofit facilities prior to issuing other revenue bonds to fund such facilities. The commission may issue revenue bonds to fund nonprofit facilities that are exchangeable for other revenue bonds, when these other revenue bonds are executed and available for delivery.

(3) The principal of and interest on any revenue bonds issued by the commission shall be secured by a pledge of unexpended bond proceeds and the revenues and receipts derived from the nonprofit facilities funded by the revenue bonds pursuant to financing documents. The resolution under which the revenue bonds are authorized to be issued and any financing document may contain agreements and provisions respecting the maintenance or use of the nonprofit facility covered thereby, the fixing and collection of rents, purchase price payments or loan payments, the creation and maintenance of special funds from such revenues or from revenue bond proceeds, the rights and remedies available in the event of default, and other provisions relating to the security for the bonds, all as the commission considers advisable which are not in conflict with this subchapter.

(4) All revenue bonds issued under this subchapter and any interest coupons applicable thereto are negotiable instruments within the meaning of Article 8 of the uniform commercial code, Title 62A RCW, regardless of form or character.

(5) Notwithstanding subsection (1) of this section, such bonds and interim notes may be issued and sold in accordance with chapter 39.46 RCW. [1990 c 167 § 4.]

43.180.330 Revenue refunding bonds. The commission may provide by resolution for the issuance of revenue refunding bonds for the purpose of refunding any obligations issued for a nonprofit facility, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption or maturity of the revenue bonds and, if considered advisable by the commission, for the additional purpose of financing improvements, extensions, or enlargements to the nonprofit facility for another nonprofit facility. The issuance of the revenue refunding bonds, the maturities and other details thereof, the rights of the owners thereof, and the rights, duties, and obligations of the commission in respect to the same shall be governed by this chapter insofar as applicable. [1990 c 167 § 5.]

43.180.340 Trust agreements. Any bonds issued under this subchapter may be secured by a trust agreement between the commission and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. The trust agreement may evidence a pledge or assignment of the financing documents and lease, sale, or loan revenues to be received from a lessee or purchaser of or borrower with respect to a nonprofit facility for the payment of principal of and interest and any premium on the bonds as the same shall become due and payable and may provide for creation and maintenance of reserves for these purposes. A trust agreement or resolution providing for the issuance of the revenue bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondowners as may be reasonable and proper and not in violation of law, including covenants setting forth the duties in relation to the acquisition of property and the construction, improvement, maintenance, use, repair, operation, and insurance of the nonprofit facility for which the bonds are authorized, and the custody, safeguarding, and application of all money. Any bank or trust company incorporated under the laws of the state which may act as depository of the proceeds of revenue bonds or of revenues may furnish such indemnifying bonds or pledge such securities as may be required by the commission. A trust agreement may set forth the rights and remedies of the bondowners and of the trustee and may restrict the individual right of action by bondowners as is customary in trust agreements or trust indentures securing bonds and debentures of private corporations. In addition, a trust agreement may contain such provisions as the commission considers reasonable and proper for the security of the bondowners which are not in conflict with this subchapter. [1990 c 167 § 6.]

43.180.350 Lessees or assignees. A lessee or contracting party under a sale contract or loan agreement shall not be required to be the eventual user of a nonprofit facility if any sublessee or assignee assumes all of the obligations of the lessee or contracting party under the lease, sale contract, or loan agreement, but the lessee or contracting party or their successors shall remain primarily liable for all of its obligations under the lease, sale contract, or loan agreement and the use of the nonprofit facility shall be consistent with the purposes of this subchapter. [1990 c 167 § 7.]

43.180.360 Default. The proceedings authorizing any revenue bonds under this subchapter or any financing document securing the revenue bonds may provide that if there is a default in the payment of the principal of or the interest on the bonds or in the performance of any agreement contained in the proceedings or financing document, the payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents, purchase price payments, and loan repayments, and to apply the revenues from the nonprofit facility in accordance with the proceedings or provisions of the financing document. Any financing document entered into under this

subchapter may also provide that if there is a default in the payment thereof or a violation of any agreement contained in the financing document, the nonprofit facility may be foreclosed and sold under proceedings in equity or in any other manner now or hereafter permitted by law. Any financing document may also provide that any trustee under the financing document or the holder of any revenue bonds secured thereby may become the purchaser at any foreclosure sale if it is the highest bidder. [1990 c 167 § 8.]

Chapter 43.185

HOUSING ASSISTANCE PROGRAM

(Formerly: Housing assistance for low-income persons)

Sections

43.185.010	Findings.
43.185.015	Housing assistance program.
43.185.030	Washington housing trust fund.
43.185.040	Repealed.
43.185.050	Use of moneys for loans and grant projects to provide housing—Eligible activities.
43.185.060	Eligible organizations.
43.185.070	Notice of grant and loan application period—Priorities—Criteria for evaluation.
43.185.080	Preconstruction technical assistance.
43.185.110	Annual report—Low-income housing assistance advisory committee.
43.185.120	Protection of state's interest.
43.185.910	Conflict with federal requirements—1991 c 356.
43.185.911	Severability—1991 c 356.

Funding: RCW 43.79.201 and 79.01.007.

43.185.010 Findings. The legislature finds that current economic conditions, federal housing policies and declining resources at the federal, state, and local level adversely affect the ability of low and very low-income persons to obtain safe, decent, and affordable housing.

The legislature further finds that members of over one hundred twenty thousand households live in housing units which are overcrowded, lack plumbing, are otherwise threatening to health and safety, and have rents and utility payments which exceed thirty percent of their income.

The legislature further finds that minorities, rural households, and migrant farm workers require housing assistance at a rate which significantly exceeds their proportion of the general population.

The legislature further finds that one of the most dramatic housing needs is that of persons needing special housing-related services, such as the mentally ill, recovering alcoholics, frail elderly persons, families with members who have disabilities, and single parents. These services include medical assistance, counseling, chore services, and child care.

The legislature further finds that housing assistance programs in the past have often failed to help those in greatest need.

The legislature declares that it is in the public interest to establish a continuously renewable resource known as the housing trust fund and housing assistance program to assist low and very low-income citizens in meeting their basic housing needs, and that the needs of very

low-income citizens should be given priority and that whenever feasible, assistance should be in the form of loans. [1991 c 356 § 1; 1986 c 298 § 1.]

43.185.015 Housing assistance program. There is created within the department of community development the housing assistance program to carry out the purposes of this chapter. [1991 c 356 § 2.]

43.185.030 Washington housing trust fund. There is hereby created in the state treasury an account to be known as the Washington housing trust fund. The housing trust fund shall include revenue from the sources established by this chapter, appropriations by the legislature, private contributions, repayment of loans, and all other sources. [1991 1st sp.s. c 13 § 87; 1991 c 356 § 3; 1987 c 513 § 6; 1986 c 298 § 2.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Effective date—Severability—1987 c 513: See notes following RCW 18.85.310.

Distribution of interest from real estate brokers' trust accounts: RCW 18.85.310.

43.185.040 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

43.185.050 Use of moneys for loans and grant projects to provide housing—Eligible activities. (1) The department shall use moneys from the housing trust fund and other legislative appropriations to finance in whole or in part any loans or grant projects that will provide housing for persons and families with special housing needs and with incomes at or below fifty percent of the median family income for the county or standard metropolitan statistical area where the project is located. At least thirty percent of these moneys used in any given funding cycle shall be for the benefit of projects located in rural areas of the state as defined by the department of community development. If the department determines that it has not received an adequate number of suitable applications for rural projects during any given funding cycle, the department may allocate unused moneys for projects in nonrural areas of the state.

(2) Activities eligible for assistance from the housing trust fund and other legislative appropriations include, but are not limited to:

(a) New construction, rehabilitation, or acquisition of low and very low-income housing units;

(b) Rent subsidies;

(c) Matching funds for social services directly related to providing housing for special-need tenants in assisted projects;

(d) Technical assistance, design and finance services and consultation, and administrative costs for eligible nonprofit community or neighborhood-based organizations;

(e) Administrative costs for housing assistance groups or organizations when such grant or loan will substantially increase the recipient's access to housing funds other than those available under this chapter;

(f) Shelters and related services for the homeless;

(g) Mortgage subsidies, including temporary rental and mortgage payment subsidies to prevent homelessness;

(h) Mortgage insurance guarantee or payments for eligible projects;

(i) Down payment or closing cost assistance for eligible first-time home buyers;

(j) Acquisition of housing units for the purpose of preservation as low-income or very low-income housing; and

(k) Projects making housing more accessible to families with members who have disabilities.

(3) Legislative appropriations from capital bond proceeds and moneys from repayment of loans from appropriations from capital bond proceeds may be used only for the costs of projects authorized under subsection (2) (a), (i), and (j) of this section, and not for the administrative costs of the department. [1991 c 356 § 4; 1986 c 298 § 6.]

43.185.060 Eligible organizations. Organizations that may receive assistance from the department under this chapter are local governments, local housing authorities, regional support networks established under chapter 71.24 RCW, nonprofit community or neighborhood-based organizations, and regional or state-wide nonprofit housing assistance organizations. [1991 c 295 § 1; 1986 c 298 § 7.]

43.185.070 Notice of grant and loan application period—Priorities—Criteria for evaluation. (1) During each calendar year in which funds from the housing trust fund or other legislative appropriations are available for use by the department for the housing assistance program, the department shall announce to all known interested parties, and through major media throughout the state, a grant and loan application period of at least ninety days' duration. This announcement shall be made as often as the director deems appropriate for proper utilization of resources. The department shall then promptly grant as many applications as will utilize available funds less appropriate administrative costs of the department. Administrative costs paid out of the housing trust fund may not exceed four percent of annual revenues available for distribution to housing trust fund projects. In awarding funds under this chapter, the department shall provide for a geographic distribution on a state-wide basis.

(2) The department shall give first priority to applications for projects and activities which utilize existing privately owned housing stock including privately owned housing stock purchased by nonprofit public development authorities and public housing authorities as created in chapter 35.82 RCW. As used in this subsection, privately owned housing stock includes housing that is acquired by a federal agency through a default on the mortgage by the private owner. Such projects and activities shall be evaluated under subsection (3) of this section. Second priority shall be given to activities and projects which utilize existing publicly owned housing

stock. All projects and activities shall be evaluated by some or all of the criteria under subsection (3) of this section, and similar projects and activities shall be evaluated under the same criteria.

(3) The department shall give preference for applications based on some or all of the criteria under this subsection, and similar projects and activities shall be evaluated under the same criteria:

(a) The degree of leveraging of other funds that will occur;

(b) The degree of commitment from programs to provide necessary habilitation and support services for projects focusing on special needs populations;

(c) Recipient contributions to total project costs, including allied contributions from other sources such as professional, craft and trade services, and lender interest rate subsidies;

(d) Local government project contributions in the form of infrastructure improvements, and others;

(e) Projects that encourage ownership, management, and other project-related responsibility opportunities;

(f) Projects that demonstrate a strong probability of serving the original target group or income level for a period of at least twenty-five years;

(g) The applicant has the demonstrated ability, stability and resources to implement the project;

(h) Projects which demonstrate serving the greatest need;

(i) Projects that provide housing for persons and families with the lowest incomes;

(j) Projects serving special needs populations which are under statutory mandate to develop community housing;

(k) Project location and access to employment centers in the region or area; and

(l) Project location and access to available public transportation services.

(4) The department shall only approve applications for projects for mentally ill persons that are consistent with a regional support network six-year capital and operating plan. [1991 c 356 § 5; 1991 c 295 § 2; 1988 c 286 § 1; 1986 c 298 § 8.]

Reviser's note: This section was amended by 1991 c 295 § 2 and by 1991 c 356 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

43.185.080 Preconstruction technical assistance. (1) The department may use moneys from the housing trust fund and other legislative appropriations, but not appropriations from capital bond proceeds, to provide preconstruction technical assistance to eligible recipients seeking to construct, rehabilitate, or finance housing-related services for very low and low-income persons. The department shall emphasize providing preconstruction technical assistance services to rural areas and small cities and towns. The department may contract with nonprofit organizations to provide this technical assistance. The department may contract for any of the following services:

(a) Financial planning and packaging for housing projects, including alternative ownership programs, such as limited equity partnerships and syndications;

(b) Project design, architectural planning, and siting;

(c) Compliance with planning requirements;

(d) Securing matching resources for project development;

(e) Maximizing local government contributions to project development in the form of land donations, infrastructure improvements, waivers of development fees, locally and state-managed funds, zoning variances, or creative local planning;

(f) Coordination with local planning, economic development, and environmental, social service, and recreational activities;

(g) Construction and materials management; and

(h) Project maintenance and management.

(2) The department shall publish requests for proposals which specify contract performance standards, award criteria, and contractor requirements. In evaluating proposals, the department shall consider the ability of the contractor to provide technical assistance to low and very low-income persons and to persons with special housing needs. [1991 c 356 § 6; 1986 c 298 § 9.]

43.185.110 Annual report—Low-income housing assistance advisory committee. The director shall prepare an annual report and shall send copies to the chair of the house of representatives committee on housing, the chair of the senate committee on commerce and labor, and one copy to the staff of each committee that summarizes the housing trust fund's income, grants and operating expenses, implementation of its program, and any problems arising in the administration thereof. The director shall promptly appoint a low-income housing assistance advisory committee composed of a representative from each of the following groups: Apartment owners, realtors, mortgage lending or servicing institutions, private nonprofit housing assistance programs, tenant associations, and public housing assistance programs. The advisory group shall advise the director on housing needs in this state, including housing needs for persons who are mentally ill or developmentally disabled or youth who are blind or deaf or otherwise disabled, operational aspects of the grant and loan program or revenue collection programs established by this chapter, and implementation of the policy and goals of this chapter. Such advice shall be consistent with policies and plans developed by regional support networks according to chapter 71.24 RCW for the mentally ill and the developmental disabilities planning council for the developmentally disabled. [1991 c 204 § 4; 1987 c 513 § 3.]

Effective date—Severability—1987 c 513: See notes following RCW 18.85.310.

43.185.120 Protection of state's interest. The department shall adopt policies to ensure that the state's interest will be protected upon either the sale or change of use of projects financed in whole or in part under RCW 43.185.050(2)(a), (i), and (j). These policies may include, but are not limited to: (1) Requiring a share of

the appreciation in the project in proportion to the state's contribution to the project; (2) requiring a lump-sum repayment of the loan or grant upon the sale or change of use of the project; or (3) requiring a deferred payment of principal or principal and interest on loans after a specified time period. [1991 c 356 § 7.]

43.185.910 Conflict with federal requirements—1991 c 356. If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1991 c 356 § 8.]

43.185.911 Severability—1991 c 356. See RCW 43.185A.901.

Chapter 43.185A

AFFORDABLE HOUSING PROGRAM

Sections

- 43.185A.010 Definitions.
- 43.185A.020 Affordable housing program—Purpose—Input.
- 43.185A.030 Activities eligible for assistance.
- 43.185A.040 Eligible organizations.
- 43.185A.050 Grant and loan application process.
- 43.185A.060 Protection of state interest.
- 43.185A.070 Monitor recipient activities.
- 43.185A.080 Rules.
- 43.185A.900 Short title.
- 43.185A.901 Severability—1991 c 356.
- 43.185A.902 Conflict with federal requirements—1991 c 356.

43.185A.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Affordable housing" means residential housing for rental or private individual ownership which, as long as the same is occupied by low-income households, requires payment of monthly housing costs, including utilities other than telephone, of no more than thirty percent of the family's income.

(2) "Department" means the department of community development.

(3) "Director" means the director of the department of community development.

(4) "First-time home buyer" means an individual or his or her spouse who have not owned a home during the three-year period prior to purchase of a home.

(5) "Low-income household" means a single person, family or unrelated persons living together whose adjusted income is less than eighty percent of the median family income, adjusted for household size, for the county where the project is located. [1991 c 356 § 10.]

43.185A.020 Affordable housing program—Purpose—Input. The affordable housing program is created in the department of community development for the purpose of developing and coordinating public and private resources targeted to meet the affordable housing needs of low-income households in the state of Washington. The program shall be developed and administered by the department with advice and input from the low-income [housing] assistance advisory committee established in RCW 43.185.110. [1991 c 356 § 11.]

43.185A.030 Activities eligible for assistance. (1) Using moneys specifically appropriated for such purpose, the department shall finance in whole or in part projects that will provide housing for low-income households.

(2) Activities eligible for assistance include, but are not limited to:

(a) New construction, rehabilitation, or acquisition of housing for low-income households;

(b) Rent subsidies in new construction or rehabilitated multifamily units;

(c) Down payment or closing costs assistance for first-time home buyers;

(d) Mortgage subsidies for new construction or rehabilitation of eligible multifamily units; and

(e) Mortgage insurance guarantee or payments for eligible projects.

(3) Legislative appropriations from capital bond proceeds and moneys from repayment of loans from appropriations from capital bond proceeds may be used only for the costs of projects authorized under subsection (2)(a), (c), (d), and (e) of this section, and not for the administrative costs of the department. [1991 c 356 § 12.]

43.185A.040 Eligible organizations. Organizations that may receive assistance from the department under this chapter are local governments, local housing authorities, nonprofit community or neighborhood-based organizations, and regional or state-wide nonprofit housing assistance organizations. [1991 c 356 § 13.]

43.185A.050 Grant and loan application process. (1) During each calendar year in which funds are available for use by the department for the affordable housing program, the department shall announce to all known interested parties, and through major media throughout the state, a grant and loan application period of at least ninety days' duration. This announcement shall be made as often as the director deems appropriate for proper utilization of resources. The department shall then promptly grant as many applications as will utilize available funds less appropriate administrative costs of the department, not to exceed five percent of moneys appropriated to the affordable housing program.

(2) The department shall develop, with advice and input from the low-income [housing] assistance advisory committee established in RCW 43.185.110, criteria to evaluate applications for assistance under this chapter. [1991 c 356 § 14.]

43.185A.060 Protection of state interest. The department shall adopt policies to ensure that the state's interest will be protected upon either the sale or change of use of projects financed in whole or in part under RCW 43.185A.030(2) (a), (b), (c), (d), and (e). These policies may include, but are not limited to: (1) Requiring a share of the appreciation in the project in proportion to the state's contribution to the project; (2) requiring a lump-sum repayment of the loan or grant upon the sale or change of use of the project; or (3) requiring a deferred payment of principal or principal and interest on loans after a specified time period. [1991 c 356 § 15.]

43.185A.070 Monitor recipient activities. The director shall monitor the activities of recipients of grants and loans under this chapter to determine compliance with the terms and conditions set forth in its application or stated by the department in connection with the grant or loan. [1991 c 356 § 16.]

43.185A.080 Rules. The department shall have the authority to promulgate rules pursuant to chapter 34.05 RCW, regarding the grant and loan process, and the substance of eligible projects, consistent with this chapter. [1991 c 356 § 17.]

43.185A.900 Short title. This chapter may be known and cited as the affordable housing act. [1991 c 356 § 9.]

43.185A.901 Severability—1991 c 356. 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. [1991 c 356 § 18.]

43.185A.902 Conflict with federal requirements—1991 c 356. If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1991 c 356 § 19.]

Chapter 43.190

LONG-TERM CARE OMBUDSMAN PROGRAM

Sections

43.190.020 "Long-term care facility" defined.

43.190.020 "Long-term care facility" defined. As used in this chapter, "long-term care facility" means any of the following which provide services to persons sixty years of age and older and is:

- (1) A facility which:

- (a) Maintains and operates twenty-four hour skilled nursing services for the care and treatment of chronically ill or convalescent patients, including mental, emotional, or behavioral problems, mental retardation, or alcoholism;

- (b) Provides supportive, restorative, and preventive health services in conjunction with a socially oriented program to its residents, and which maintains and operates twenty-four hour services including board, room, personal care, and intermittent nursing care. "Long-term health care facility" includes nursing homes and nursing facilities, but does not include acute care hospital or other licensed facilities except for that distinct part of the hospital or facility which provides nursing facility services.

- (2) Any family home, group care facility, or similar facility determined by the secretary, for twenty-four hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual.

- (3) Any swing bed in an acute care facility. [1991 1st sp.s. c 8 § 3; 1983 c 290 § 2.]

Effective date—1991 1st sp.s. c 8: See note following RCW 18.51.050.

Chapter 43.200

RADIOACTIVE WASTE ACT

Sections

43.200.080	Additional powers and duties of director—Site closure account—Perpetual surveillance and maintenance account.
43.200.170	Waste disposal surcharges and penalty surcharges—Disposition.
43.200.200	Review of potential damage—Liability coverage—Reports.
43.200.210	Immunity of state—Demonstration of liability coverage—Suspension of permit.
43.200.220	Site closure fee—Generally.
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43.200.080 Additional powers and duties of director—Site closure account—Perpetual surveillance and maintenance account. The director of ecology shall, in addition to the powers and duties otherwise imposed by law, have the following special powers and duties:

- (1) To fulfill the responsibilities of the state under the lease between the state of Washington and the federal government executed September 10, 1964, covering one thousand acres of land lying within the Hanford reservation near Richland, Washington. The department of ecology may sublease to private or public entities all or a portion of the land for specific purposes or activities which are determined, after public hearing, to be in agreement with the terms of the lease and in the best interests of the citizens of the state consistent with any criteria that may be developed as a requirement by the legislature;

(2) To assume the responsibilities of the state under the perpetual care agreement between the state of Washington and the federal government executed July 29, 1965 and the sublease between the state of Washington and the site operator of the Hanford low-level radioactive waste disposal facility. In order to finance perpetual surveillance and maintenance under the agreement and ensure site closure under the sublease, the department of ecology shall impose and collect fees from parties holding radioactive materials for waste management purposes. The fees shall be established by rule adopted under chapter 34.05 RCW and shall be an amount determined by the department of ecology to be necessary to defray the estimated liability of the state. Such fees shall reflect equity between the disposal facilities of this and other states. A site closure account and a perpetual surveillance and maintenance account is hereby created in the state treasury. The site closure account shall be exclusively available to reimburse, to the extent that moneys are available in the account, the site operator for its costs plus a reasonable profit as agreed by the operator and the state, or to reimburse the state licensing agency and any agencies under contract to the state licensing agency for their costs in final closure and decommissioning of the Hanford low-level radioactive waste disposal facility. If a balance remains in the account after satisfactory performance of closure and decommissioning, this balance shall be transferred to the perpetual surveillance and maintenance account. The perpetual surveillance and maintenance account shall be used exclusively by the state to meet post-closure surveillance and maintenance costs, or for otherwise satisfying surveillance and maintenance obligations. Appropriations are required to permit expenditures and payment of obligations from the site closure account and the perpetual surveillance and maintenance account. All moneys, including earnings from the investment of balances in the site closure and the perpetual surveillance and maintenance account, less the allocation to the state treasurer's service account [fund], pursuant to RCW 43.08.190 accruing under the authority of this section shall be directed to the site closure account until December 31, 1992. Thereafter receipts including earnings from the investment of balances in the site closure and the perpetual surveillance and maintenance account, less the allocation to the state treasurer's service account [fund], pursuant to RCW 43.08.190 shall be directed to the site closure account and the perpetual surveillance and maintenance account as specified by the department. Additional moneys specifically appropriated by the legislature or received from any public or private source may be placed in the site closure account and the perpetual surveillance and maintenance account;

(3) To assure maintenance of such insurance coverage by state licensees, lessees, or sublessees as will adequately, in the opinion of the director, protect the citizens of the state against nuclear accidents or incidents that may occur on privately or state-controlled nuclear facilities;

(4) To institute a user permit system and issue site use permits, consistent with regulatory practices, for generators, packagers, or brokers using the Hanford low-level radioactive waste disposal facility. The costs of administering the user permit system shall be borne by the applicants for site use permits. The site use permit fee shall be set at a level that is sufficient to fund completely the executive and legislative participation in activities related to the Northwest Interstate Compact on Low-Level Radioactive Waste Management;

(5) To make application for or otherwise pursue any federal funds to which the state may be eligible, through the federal resource conservation and recovery act or any other federal programs, for the management, treatment or disposal, and any remedial actions, of wastes that are both radioactive and hazardous at all Hanford low-level radioactive waste disposal facilities; and

(6) To develop contingency plans for duties and options for the department and other state agencies related to the Hanford low-level radioactive waste disposal facility based on various projections of annual levels of waste disposal. These plans shall include an analysis of expected revenue to the state in various taxes and funds related to low-level radioactive waste disposal and the resulting implications that any increase or decrease in revenue may have on state agency duties or responsibilities. The plans shall be updated annually. The department shall report annually on the plans and on the balances in the site closure and perpetual surveillance accounts to the energy and utilities committees of the senate and the house of representatives. [1991 1st sp.s. c 13 § 60; 1990 c 21 § 6; 1989 c 418 § 2; 1986 c 2 § 1; 1983 1st ex.s. c 19 § 8.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Suspension and reinstatement of site use permits: RCW 70.98.085.

43.200.170 Waste disposal surcharges and penalty surcharges—Disposition. The governor may assess surcharges and penalty surcharges on the disposal of waste at the Hanford low-level radioactive waste disposal facility. The surcharges may be imposed up to the maximum extent permitted by federal law. Ten dollars per cubic foot of the moneys received under this section shall be transmitted monthly to the site closure account established under RCW 43.200.080. The rest of the moneys received under this section shall be deposited in the general fund. [1990 c 21 § 3; 1986 c 2 § 3.]

43.200.200 Review of potential damage—Liability coverage—Reports. (1) The director of the department of ecology shall periodically review the potential for bodily injury and property damage in the packaging, shipping, transporting, treatment, storage, and disposal of commercial low-level radioactive materials under licenses or permits issued by the state.

(2) Except as otherwise provided in subsection (7) of this section, the director shall require each permit holder to maintain liability coverage in an amount that is adequate to protect the state and its citizens from all claims, suits, losses, damages, or expenses on account of injuries

to persons and property damage arising or growing out of the packaging, shipping, transporting, treatment, storage, and disposal of commercial low-level radioactive materials. The liability coverage may be in the form of insurance, cash, surety bonds, corporate guarantees, and other acceptable instruments.

(3) In making the determination of the appropriate level of liability coverage, the director shall consider:

(a) The nature and purpose of the activity and its potential for injury and damages to or claims against the state and its citizens;

(b) The current and cumulative manifested volume and radioactivity of material being packaged, transported, buried, or otherwise handled;

(c) The location where the material is being packaged, transported, buried, or otherwise handled, including the proximity to the general public and geographic features such as geology and hydrology, if relevant; and

(d) The legal defense cost, if any, that will be paid from the required liability coverage amount.

(4) The director may establish different levels of required liability coverage for various classes of permit holders.

(5) The director shall establish by rule the instruments or mechanisms by which a person may demonstrate liability coverage as required by RCW 43.200.210. Any instrument or mechanism approved as an alternative to liability insurance shall provide the state and its citizens with a level of financial protection at least as great as would be provided by liability insurance.

(6) The director shall complete the first review and determination, and report the results to the legislature, by December 1, 1987. At least every five years thereafter, the director shall conduct a new review and determination and report its results to the legislature.

(7)(a) The director by rule may exempt from the requirement to provide liability coverage a class of permit holders if the director determines that the exemption of that class will not pose a significant risk to persons or property and will not pose substantial financial risk to the state.

(b) The director may exempt from the requirement to provide liability coverage an individual permit holder if the director determines that the cost of obtaining that coverage for that permit holder would impose a substantial financial hardship on the person and that failure to maintain the coverage will not pose a significant risk to persons or property and will not pose a substantial financial risk to the state. [1990 c 82 § 1; 1986 c 191 § 1.]

43.200.210 Immunity of state—Demonstration of liability coverage—Suspension of permit. (1)(a) The department of ecology shall require that any person who holds or applies for a permit under this chapter indemnify and hold harmless the state from claims, suits, damages, or expenses on account of injuries to or death of persons and property, arising or growing out of any operations and activities for which the person holds the license or permit, and any necessary or incidental operations.

(b) Except for a permit holder not required to maintain liability insurance coverage under RCW 43.200.200(7), the department shall require any person who holds or applies for a permit under this chapter to demonstrate that the person has and maintains liability coverage for the operations for which the state has been indemnified and held harmless pursuant to this section. The agency shall require coverage in an amount determined by the director of the department of ecology pursuant to RCW 43.200.200.

(2) The department of ecology shall suspend the license of any person required by this section to hold and maintain liability coverage who fails to demonstrate compliance with this section. The permit shall not be reinstated until the person demonstrates compliance with this section.

(3) The department of ecology shall require (a) that any person required to maintain liability coverage maintain with the agency current copies of any insurance policies, certificates of insurance, or any other documents used to comply with this section, (b) that the agency be notified of any changes in the insurance coverage or financial condition of the person, and (c) that the state be named as an insured party on any insurance policy used to comply with this section. [1990 c 82 § 2; 1986 c 191 § 2.]

43.200.220 Site closure fee—Generally. Beginning January 1, 1993, the department of ecology may impose a reasonable site closure fee if necessary to be deposited in the site closure account established under RCW 43.200.080. The department may continue to collect moneys for the site closure account until the account contains an amount sufficient to complete the closure plan, as specified in the radioactive materials license issued by the department of health. [1990 c 21 § 4.]

Rate regulation anticipated—1990 c 21: "State and national policy directs that the management of low-level radioactive waste shall be accomplished by a system of interstate compacts and the development of regional disposal sites. The Northwest regional compact, comprised of the states of Alaska, Hawaii, Idaho, Montana, Oregon, Utah, and Washington, has as its disposal facility the low-level radioactive waste disposal site located near Richland, Washington. This site is expected to be the sole site for disposal of low-level radioactive waste for compact members effective January 1, 1993. Future closure of this site will require significant financial resources.

Low-level radioactive waste is generated by essential activities and services that benefit the citizens of the state. Washington state's low-level radioactive waste disposal site has been used by the nation and the Northwest compact as a disposal site since 1965. The public has come to rely on access to this site for disposal of low-level radioactive waste, which requires separate handling from other solid and hazardous wastes. The price of disposing of low-level radioactive waste at the Washington state low-level radioactive waste disposal site is anticipated to increase when the federal low-level radioactive waste policy amendments act of 1985 is implemented and waste generated outside the Northwest compact states is excluded. To protect Washington and other Northwest compact states' businesses and services, such as electrical production, medical and university research, and private industries, upon which the public relies, there may be a need to regulate the rates charged by the operator of Washington's low-level radioactive waste disposal site." [1990 c 21 § 1.]

Low-level waste disposal rate regulation study: RCW 81.04.520.

43.200.230 Fees for waste generators. (Effective January 1, 1993.) The director of the department of

ecology shall require that generators of waste pay a fee for each cubic foot of waste disposed at any facility in the state equal to six dollars and fifty cents. The fee shall be imposed specifically on the generator of the waste and shall not be considered to apply in any way to the low-level site operator's disposal activities. The fee shall be allocated in accordance with RCW 43.200.233 and 43.200.235. This subsection shall be invalidated and the authorization to collect a surcharge removed if the legislature or any administrative agency of the state of Washington prior to January 1, 1993, (1) imposes fees, assessments, or charges other than perpetual care and maintenance, site surveillance, and site closing fees currently applicable to the Hanford commercial low-level waste site operator's activities, (2) imposes any additional fees, assessments, or charges on generators using the Hanford commercial low-level waste site, or (3) increases any existing fees, assessments, or charges. [1991 c 272 § 16.]

Effective dates—1991 c 272: See RCW 81.108.901.

43.200.233 Waste generator surcharge remittal to counties. (Effective January 1, 1993.) A portion of the surcharge received under RCW 43.200.230 shall be remitted monthly to the county in which the low-level radioactive waste disposal facility is located in the following manner:

- (1) During 1993, six dollars and fifty cents per cubic foot of waste;
- (2) During 1994, three dollars and twenty-five cents per cubic foot of waste; and
- (3) During 1995 and thereafter, two dollars per cubic foot of waste. [1991 c 272 § 17.]

Effective dates—1991 c 272: See RCW 81.108.901.

43.200.235 Disposal of waste generator surcharges. (Effective January 1, 1993.) Except for moneys that may be remitted to a county in which a low-level radioactive waste disposal facility is located, all surcharges authorized under RCW 43.200.230 shall be deposited in the fund created in RCW 43.31.422. [1991 c 272 § 18.]

Effective dates—1991 c 272: See RCW 81.108.901.

Chapter 43.210

SMALL BUSINESS EXPORT FINANCE ASSISTANCE CENTER

(Formerly: Export assistance center)

Sections

43.210.010	Findings.
43.210.020	Small business export finance assistance center authorized—Purposes.
43.210.030	Board of directors—Membership—Terms—Vacancies.
43.210.050	Export assistance services contract with department of trade and economic development.
43.210.070	Small business export finance assistance center fund.
43.210.100	Pacific Northwest export assistance project—Generally.
43.210.110	Duties of center regarding project.
43.210.120	Rules.

Reviser's note—Sunset Act application: The Pacific Northwest export assistance project is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.373. RCW 43.210.070, 43.210.100, 43.210.110, and 43.210.120 are scheduled for future repeal under RCW 43.131.374.

43.210.010 Findings. The legislature finds:

(1) The exporting of goods and services from Washington to international markets is an important economic stimulus to the growth, development, and stability of the state's businesses in both urban and rural areas, and that these economic activities create needed jobs for Washingtonians.

(2) Impediments to the entry of many small and medium-sized businesses into export markets have restricted growth in exports from the state.

(3) Particularly significant impediments for many small and medium-sized businesses are the lack of easily accessible information about export opportunities and financing alternatives.

(4) There is a need for a small business export finance assistance center which will specialize in providing export assistance to small and medium-sized businesses throughout the state in acquiring information about export opportunities and financial alternatives for exporting. [1990 1st ex.s. c 17 § 65; 1985 c 231 § 1; 1983 1st ex.s. c 20 § 1.]

Sunset Act application: See note following chapter digest in 1989 Volume 4.

Intent—1990 1st ex.s. c 17: "The legislature finds that the Puget Sound region is experiencing economic prosperity and the challenges associated with rapid growth; much of the rest of the state is not experiencing economic prosperity, and faces challenges associated with slow economic growth. It is the intent of the legislature to encourage economic prosperity and balanced economic growth throughout the state.

In order to accomplish this goal, growth must be managed more effectively in the Puget Sound region, and rural areas must build local capacity to accommodate additional economic activity in their communities. Where possible, rural economies and low-income areas should be linked with prosperous urban economies to share economic growth for the benefit of all areas and the state.

To accomplish this goal it is the intent of the legislature to: (1) Assure equitable opportunities to secure prosperity for distressed areas, rural communities, and disadvantaged populations by promoting urban-rural economic links, and by promoting value-added product development, business networks, and increased exports from rural areas; (2) improve the economic development service delivery system to be better able to serve these areas, communities, and populations; (3) re-direct the priorities of the state's economic development programs to focus economic development efforts into areas and sectors of the greatest need; (4) build local capacity so that communities are better able to plan for growth and achieve self-reliance; (5) administer grant programs to promote new feasibility studies and project development on projects of interest to rural areas or areas outside of the Puget Sound region; and (6) develop a coordinated economic investment strategy involving state economic development programs, businesses, educational and vocational training institutions, local governments and local economic development organizations, ports, and others." [1990 1st ex.s. c 17 § 64.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

43.210.020 Small business export finance assistance center authorized—Purposes. A nonprofit corporation, to be known as the small business export finance assistance center, and branches subject to its authority, may be formed under chapter 24.03 RCW for the following public purposes:

(1) To assist small and medium-sized businesses in both urban and rural areas in the financing of export transactions.

(2) To provide, singly or in conjunction with other organizations, information and assistance to these businesses about export opportunities and financing alternatives.

(3) To provide information to and assist those businesses interested in exporting products, including the opportunities available to them in organizing export trading companies under the United States export trading company act of 1982, for the purpose of increasing their comparative sales volume and ability to export their products to foreign markets. [1990 1st ex.s. c 17 § 66; 1985 c 231 § 2; 1983 1st ex.s. c 20 § 2.]

Sunset Act application: See note following chapter digest in 1989 Volume 4.

Intent—1990 1st ex.s. c 17: See note following RCW 43.210.010.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Transfer of property—1985 c 231: "All reports, documents, surveys, books, records, files, papers, or written material in the possession of the export assistance center shall be delivered to the custody of the small business export finance assistance center. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the export assistance center shall be made available to the small business export finance assistance center. All funds, credits, or other assets held by the export assistance center shall be assigned to the small business export finance assistance center.

Whenever any question arises as to the transfer of any funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned." [1985 c 231 § 7.]

Existing contracts—1985 c 231: "All existing contracts and obligations shall remain in full force and shall be performed by the small business export finance assistance center." [1985 c 231 § 8.]

Savings—1985 c 231: "The transfer of the powers, duties, and functions of the export assistance center shall not affect the validity of any act performed prior to May 10, 1985." [1985 c 231 § 9.]

43.210.030 Board of directors—Membership—Terms—Vacancies. The small business export finance assistance center and its branches shall be governed and managed by a board of nineteen directors appointed by the governor and confirmed by the senate. The directors shall serve terms of six years except that two of the original directors shall serve for two years and two of the original directors shall serve for four years. The directors may provide for the payment of their expenses. The directors shall include a representative of a not-for-profit corporation formed for the purpose of facilitating economic development, at least two representatives of state financial institutions engaged in the financing of export transactions, a representative of a port district, and a representative of organized labor. Of the remaining board members, there shall be one representative of business from the area west of Puget Sound, one representative of business from the area east of Puget Sound and west of the Cascade range, one representative of business from the area east of the Cascade range and west of the Columbia river, one representative of business from the area east of the Columbia river, the director of the department of trade and economic

development, and the director of the department of agriculture. One of the directors shall be a representative of the public selected from the area in the state west of the Cascade mountain range and one director shall be a representative of the public selected from that area of the state east of the Cascade mountain range. One director shall be a representative of the public at large. The directors shall be broadly representative of geographic areas of the state, and the representatives of businesses shall represent at least four different industries in different sized businesses as follows: (a) One representative of a company employing fewer than one hundred persons; (b) one representative of a company employing between one hundred and five hundred persons; (c) one representative of a company employing more than five hundred persons; (d) one representative from an export management company; and (e) one representative from an agricultural or food processing company. Any vacancies on the board due to the expiration of a term or for any other reason shall be filled by appointment by the governor for the unexpired term. [1991 c 314 § 15; 1985 c 231 § 3; 1983 1st ex.s. c 20 § 3.]

Findings—1991 c 314: See note following RCW 43.31.601.

43.210.050 Export assistance services contract with department of trade and economic development. The small business export finance assistance center formed under RCW 43.210.020 and 43.210.030 shall enter into a contract under this chapter with the department of trade and economic development or its statutory successor. The contract shall require the center to provide export assistance services, consistent with RCW 43.210.070 and 43.210.100 through 43.210.120, shall have a duration of two years, and shall require the center to aggressively seek to fund its continued operation from nonstate funds. The contract shall also require the center to report annually to the department on its success in obtaining nonstate funding. Upon expiration of the contract, any provisions within the contract applicable to the Pacific Northwest export assistance project shall be automatically renewed without change provided the legislature appropriates funds for administration of the small business export assistance center and the Pacific Northwest export assistance project. The provisions of the contract related to the Pacific Northwest export assistance project may be changed at any time if the director of the department of trade and economic development or the president of the small business export finance assistance center present compelling reasons supporting the need for a contract change to the board of directors and a majority of the board of directors agrees to the changes. The department of agriculture shall be included in the contracting negotiations with the department of trade and economic development and the small business export finance assistance center when the Pacific Northwest export assistance project provides export services to industrial sectors within the administrative domain of the Washington state department of agriculture. The department of trade and economic development, the small business export finance assistance

center, and, if appropriate, the department of agriculture, shall report annually, as one group, to the appropriate legislative oversight committees on the progress of the Pacific Northwest export assistance project. [1991 c 314 § 16. Prior: 1985 c 466 § 64; 1985 c 231 § 5; 1983 1st ex.s. c 20 § 5.]

Findings—1991 c 314: See note following RCW 43.31.601.

Effective date—**Severability**—1985 c 466: See notes following RCW 43.31.005.

43.210.070 Small business export finance assistance center fund. The small business export finance assistance center fund is created in the custody of the state treasurer. Expenditures from the fund may be used only for the purposes of funding the services of the small business export finance assistance center and its projects under this chapter. Only the director of the department of trade and economic development or the director's designee may authorize expenditures from the fund. The director of the department of trade and economic development shall not withhold funds appropriated for the administration of the small business export finance assistance center and its projects, if the small business export finance assistance center complies with the provisions of its contract under RCW 43.210.050 and 43.210.100. Funding appropriated by the state of Washington shall not be used to provide services to other states or provinces. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. [1991 c 314 § 14.]

Sunset Act application: See note following chapter digest.

Findings—1991 c 314: See note following RCW 43.31.601.

43.210.100 Pacific Northwest export assistance project—Generally. (1) The Pacific Northwest export assistance project is hereby created for the following purposes:

(a) To assist manufacturers relatively new to exporting with gross annual revenues less than twenty-five million dollars with comprehensive services for designing and managing introductory export strategies and in securing financing and credit guarantees for export transactions;

(b) To provide, in cooperation with the export promotion services offered by the department of trade and economic development and the Washington state department of agriculture, information and assistance to manufacturers with gross annual revenues less than twenty-five million dollars about the methods and procedures of structuring company specific export financing and credit guarantee alternatives; or

(c) To provide information to their clients about opportunities in organizing cooperative export networks, foreign sales corporations, or export trading companies under the United States export trading company act of 1982, for the purpose of increasing their comparative sales volume and ability to export their products to foreign markets.

(2) The Pacific Northwest export assistance project is a separate branch of the small business export finance assistance center for accounting and auditing purposes.

(3) The Pacific Northwest export assistance project is subject to the authority of the small business export finance assistance center, under RCW 43.210.020, and shall be governed and managed by the board of directors, under RCW 43.210.030. [1991 c 314 § 11.]

Sunset Act application: See note following chapter digest.

Findings—1991 c 314: See note following RCW 43.31.601.

43.210.110 Duties of center regarding project. (1) The small business export finance assistance center has the following powers and duties when exercising its authority under RCW 43.210.100(3):

(a) Solicit and accept grants, contributions, and any other financial assistance from the federal government, federal agencies, and any other public or private sources to carry out its purposes;

(b) Offer comprehensive export assistance and counseling to manufacturers relatively new to exporting with gross annual revenues less than twenty-five million dollars. As close to ninety percent as possible of each year's new cadre of clients must have gross annual revenues of less than five million dollars at the time of their initial contract. At least fifty percent of each year's new cadre of clients shall be from timber impact areas as defined in RCW 43.31.601. Counseling may include, but not be limited to, helping clients obtain debt or equity financing, in constructing competent proposals, and assessing federal guarantee and/or insurance programs that underwrite exporting risk; assisting clients in evaluating their international marketplace by developing marketing materials, assessing and selecting targeted markets; assisting firms in finding foreign customers by conducting foreign market research, evaluating distribution systems, selecting and assisting in identification of and/or negotiations with foreign agents, distributors, retailers, and by promoting products through attending trade shows abroad; advising companies on their products, guarantees, and after sales service requirements necessary to compete effectively in a foreign market; designing a competitive strategy for a firm's products in targeted markets and methods of minimizing their commercial and political risks; securing for clients specific assistance as needed, outside the center's field of expertise, by referrals to other public or private organizations. The Pacific Northwest export assistance project shall focus its efforts on facilitating export transactions for its clients, and in doing so, provide such technical services as are appropriate to accomplish its mission either with staff or outside consultants;

(c) Sign three-year counseling agreements with its clients that provide for termination if adequate funding for the Pacific Northwest export assistance project is not provided in future appropriations. Counseling agreements shall not be renewed unless there are compelling reasons to do so, and under no circumstances shall they be renewed for more than two additional years. A counseling agreement may not be renewed more than once. The counseling agreements shall have mutual performance clauses, that if not met, will be grounds for releasing each party, without penalty, from the provisions of the agreement. Clients shall be immediately released

from a counseling agreement with the Pacific Northwest export assistance project, without penalty, if a client wishes to switch to a private export management service and produces a valid contract signed with a private export management service, or if the president of the small business export finance assistance center determines there are compelling reasons to release a client from the provisions of the counseling agreement;

(d) May contract with private or public international trade education services to provide Pacific Northwest export assistance project clients with training in international business. The president and board of directors shall decide the amount of funding allocated for educational services based on the availability of resources in the operating budget of the Pacific Northwest export assistance project;

(e) May contract with the Washington state international trade fair to provide services for Pacific Northwest export assistance project clients to participate in one trade show annually. The president and board of directors shall decide the amount of funding allocated for trade fair assistance based on the availability of resources in the operating budget of the Pacific Northwest export assistance project;

(f) Provide biennial assessments of its performance. Project personnel shall work with the department of revenue and employment security department to confidentially track the performance of the project's clients in increasing tax revenues to the state, increasing gross sales revenues and volume of products destined to foreign clients, and in creating new jobs for Washington citizens. A biennial report shall be prepared for the governor and legislature to assess the costs and benefits to the state from creating the project. The president of the small business export finance assistance center shall design an appropriate methodology for biennial assessments in consultation with the director of the department of trade and economic development and the director of the Washington state department of agriculture. The department of revenue and the employment security department shall provide data necessary to complete this biennial evaluation, if the data being requested is available from existing data bases. Client-specific information generated from the files of the department of revenue and the employment security department for the purposes of this evaluation shall be kept strictly confidential by each department and the small business export finance assistance center;

(g) Take whatever action may be necessary to accomplish the purposes set forth in RCW 43.210.070 and 43.210.100 through 43.210.120; and

(h) Limit its assistance to promoting the exportation of value-added manufactured goods. The project shall not provide counseling or assistance, under any circumstances, for the importation of foreign made goods into the United States.

(2) The Pacific Northwest export assistance project shall not, under any circumstances, assume ownership or take title to the goods of its clients.

(3) The Pacific Northwest export assistance project may not use any Washington state funds which come

from the public treasury of the state of Washington to make loans or to make any payment under a loan guarantee agreement. Under no circumstances may the center use any funds received under RCW 43.210.050 to make or assist in making any loan or to pay or assist in paying any amount under a loan guarantee agreement. Debts of the center shall be center debts only and may be satisfied only from the resources of the center. The state of Washington shall not in any way be liable for such debts.

(4) The Pacific Northwest export assistance project shall make every effort to seek nonstate funds to supplement its operations.

(5) The Pacific Northwest export assistance project shall take whatever steps are necessary to provide its services, if requested, to the states of Oregon, Idaho, Montana, Alaska, and the Canadian provinces of British Columbia and Alberta. Interstate services shall not be provided by the Pacific Northwest export assistance project during its first biennium of operation. The provision of services may be temporary and subject to the payment of fees, or each state may request permanent services contingent upon a level of permanent funding adequate for services provided. Temporary services and fees may be negotiated by the small business export finance assistance center's president subject to approval of the board of directors. The president of the small business export finance assistance center may enter into negotiations with neighboring states to contract for delivery of the project's services. Final contracts for providing the project's counseling and services outside of the state of Washington on a permanent basis shall be subject to approval of the governor, appropriate legislative oversight committees, and the small business export finance assistance center's board of directors.

(6) The small business export finance assistance center may receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the Pacific Northwest export assistance project and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments.

(7) The president of the small business export finance assistance center, in consultation with the board of directors, may use the following formula in determining the number of clients that can be reasonably served by the Pacific Northwest export assistance project relative to its appropriation. Divide the amount appropriated for administration of the Pacific Northwest export assistance project by the marginal cost of adding each additional Pacific Northwest export assistance project client. For the purposes of this calculation, and only for the first biennium of operation, the biennial marginal cost of adding each additional Pacific Northwest export assistance project client shall be fifty-seven thousand ninety-five dollars. The biennial marginal cost of adding each additional client after the first biennium of operation shall be established from the actual operating experience of the Pacific Northwest export assistance project.

(8) All receipts from the Pacific Northwest export assistance project shall be deposited into the general fund. [1991 c 314 § 12.]

Sunset Act application: See note following chapter digest.

Findings—1991 c 314: See note following RCW 43.31.601.

43.210.120 Rules. The department of trade and economic development shall adopt rules under chapter 34.05 RCW as necessary to carry out the purposes of RCW 43.210.070 and 43.210.100 through 43.210.120. [1991 c 314 § 13.]

Sunset Act application: See note following chapter digest.

Findings—1991 c 314: See note following RCW 43.31.601.

Chapter 43.220

WASHINGTON CONSERVATION CORPS

(Expires July 1, 1995.)

Sections

43.220.070 Corps membership—Eligibility, terms, etc.
43.220.230 Limitation on use of funds.

43.220.070 Corps membership—Eligibility, terms, etc. (1) Conservation corps members shall be unemployed residents of the state between eighteen and twenty-five years of age at the time of enrollment who are citizens or lawful permanent residents of the United States. The age requirements may be waived for corps leaders and specialists with special leadership or occupational skills; such members shall be given special responsibility for providing leadership, character development, and sense of community responsibility to the corps members, groups, and work crews to which they are assigned. The upper age requirement may be waived for residents who have a sensory or mental handicap. Special effort shall be made to recruit minority and disadvantaged youth who meet selection criteria of the conservation corps. Preference shall be given to youths residing in areas, both urban and rural, in which there exists substantial unemployment exceeding the state average unemployment rate.

(2) The legislature finds that people with developmental disabilities would benefit from experiencing a meaningful work experience, and learning the value of labor and of membership in a productive society.

The legislature urges state agencies that are participating in the Washington conservation corps program to consider for enrollment in the program people who have developmental disabilities, as defined in RCW 71A.10.020.

If an agency chooses to enroll people with developmental disabilities in its Washington conservation corps program, the agency may apply to the United States department of labor, employment standards administration for a special subminimum wage certificate in order to be allowed to pay enrollees with developmental disabilities according to their individual levels of productivity.

(3) Corps members shall not be considered state employees. Other provisions of law relating to civil service,

hours of work, rate of compensation, sick leave, unemployment compensation, state retirement plans, and vacation leave do not apply to the Washington conservation corps except for the crew leaders, who shall be project employees, and the administrative and supervisory personnel.

(4) Enrollment shall be for a period of six months which may be extended for an additional six months by mutual agreement of the corps and the corps member. Corps members shall be reimbursed at the minimum wage rate established by state or federal law, whichever is higher: **PROVIDED**, That if agencies elect to run a residential program, the appropriate costs for room and board shall be deducted from the corps member's paycheck as provided in chapter 43.220 RCW.

(5) Corps members are to be available at all times for emergency response services coordinated through the department of community development or other public agency. Duties may include sandbagging and flood cleanup, search and rescue, and other functions in response to emergencies. [1990 c 71 § 2; 1988 c 78 § 1; 1986 c 266 § 48. Prior: 1985 c 230 § 7; 1985 c 7 § 110; 1983 1st ex.s. c 40 § 7.]

Legislative finding—1990 c 71: See note following RCW 43.220.230.

Severability—1986 c 266: See note following RCW 38.52.005.

43.220.230 Limitation on use of funds. (1) Not more than fifteen percent of the funds available for the Washington conservation corps and the Washington service corps prescribed in chapter 50.65 RCW shall be expended for the cost of administration. For the purpose of this chapter, administrative costs are defined as including, but not limited to, program planning and evaluation, budget development and monitoring, personnel management, contract administration, payroll, development of program reports, normal recruitment and placement procedures, standard office space, and costs and utilities.

(2) The fifteen percent limitation does not include costs for any of the following: Program support activities such as direct supervision of enrollees, counseling, job training, equipment, and extraordinary recruitment procedures necessary to fill project positions.

(3) The total costs for all items included under subsection (1) of this section and excluded from the fifteen percent lid under subsection (2) of this section shall not: (a) Exceed thirty percent of the appropriated funds available during a fiscal biennium for the Washington conservation corps and the Washington service corps programs; or (b) result in the average cost per enrollee exceeding the level established by the following formula: Corps member basic hourly wage multiplied by two thousand eighty. The tests included in items (a) and (b) of this subsection are in the alternative and it is only required that one of these tests be satisfied. For purposes of this section, the term administrative costs does not include those extraordinary placement costs of the department of employment security for which the department is eligible for reimbursement under RCW

43.220.240. The provisions of this section apply separately to each corps agency listed in RCW 43.220.020. [1990 c 71 § 3; 1985 c 230 § 3.]

Legislative finding—1990 c 71: "The legislature finds that the Washington conservation corps has proven to be an effective method to provide meaningful work experience for many of the state's young persons. Because of recent, and possible future, increases in the minimum wage laws, it is necessary to make an adjustment in the limitation that applies to corps member reimbursements." [1990 c 71 § 1.]

Chapter 43.230

ATHLETIC HEALTH CARE AND TRAINING COUNCIL

Sections

43.230.010 Athletic health care and training council created—
Membership—Terms—Chairperson.

Reviser's note—Sunset Act application: The athletic health care and training council is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.321. RCW 43.230.010 through 43.230.050 are scheduled for future repeal under RCW 43.131.322.

43.230.010 Athletic health care and training council created—Membership—Terms—Chairperson. (1) The athletic health care and training council is created. The council shall consist of fourteen members selected by the governor to serve four-year staggered terms. The terms of the initial members shall be as follows: Two members will serve a one-year term, four members will serve two-year terms, four members will serve three-year terms, and four members will serve four-year terms. The governor shall select the members to represent diverse racial and ethnic backgrounds, the different geographical areas of the state, and both men and women as follows: Two members shall be physicians licensed under chapter 18.57 or 18.71 RCW, two members shall be physical therapists licensed under chapter 18.74 RCW, two members shall be athletic trainers, two members shall be principals of public junior high schools in this state with one from a large district and one from a small district, two members shall be principals of public high schools in this state with one from a large district and one from a small district, two members shall be school district superintendents with one from a large district and one from a small district, one member shall be a representative of a private school which conducts junior and senior high school athletic programs, and one member shall be employed by or be an officer of an organization to which a school district has delegated control, supervision, and regulation of an activity under RCW 28A.600.200.

(2) The members of the council shall select the chairperson from among their members. [1990 c 33 § 583; 1984 c 286 § 2.]

Sunset Act application: See note following chapter digest.

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

Legislative findings—1984 c 286: "The legislature finds that the provisions made for safety, emergency care, and athletic health care and training for persons of junior high or high school age are dramatically inferior to those made for athletes at either the postsecondary or

professional levels. The legislature further finds that when care is provided at the junior high and high school level, participants in different athletic activities are not provided with equal care.

The legislature finds that the health and safety of the participants in athletics who are between twelve and eighteen years of age is of great importance. The legislature further finds that standards and guidelines for the health and safety of participants in organized athletics both in the high schools and junior high schools will help protect the young people of this state." [1984 c 286 § 1.]

Severability—1984 c 286: "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." [1984 c 286 § 13.]

Chapter 43.240

ECONOMIC DEVELOPMENT BOARD

Sections

43.240.910 State economic development board—Termination.
43.240.911 State economic development board—Repeal.

43.240.910 State economic development board—Termination. The state economic development board and its powers and duties shall be terminated on June 30, 1993, as provided in RCW 43.240.911. [1988 c 186 § 9. Formerly RCW 43.131.363.]

43.240.911 State economic development board—Repeal. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 1994:

(1) Section 9, chapter 467, Laws of 1985 and RCW 43.240.010;

(2) Section 10, chapter 467, Laws of 1985 and RCW 43.240.020;

(3) Section 11, chapter 467, Laws of 1985, section 15, chapter 195, Laws of 1987 and RCW 43.240.030;

(4) Section 12, chapter 467, Laws of 1985 and RCW 43.240.040;

(5) Section 13, chapter 467, Laws of 1985 and RCW 43.240.050;

(6) Section 14, chapter 467, Laws of 1985 and RCW 43.240.060; and

(7) Section 16, chapter 467, Laws of 1985 and RCW 43.240.070. [1988 c 186 § 10. Formerly RCW 43.131.364.]

Chapter 43.250

INVESTMENT OF LOCAL GOVERNMENT FUNDS

Sections

43.250.020 Definitions.
43.250.030 Public funds investment account.
43.250.060 Investment pool—Generally.
43.250.070 Investment pool—Separate accounts for participants—Monthly status report.

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

(1) "Public funds investment account" or "investment pool" means the aggregate of all funds as defined in

subsection (4) of this section that are placed in the custody of the state treasurer for investment and reinvestment.

(2) "Political subdivision" means any county, city, town, municipal corporation, political subdivision, or special purpose taxing district in the state.

(3) "Local government official" means any officer or employee of a political subdivision who has been designated by statute or by local charter, ordinance, or resolution as the officer having the authority to invest the funds of the political subdivision. However, the county treasurer shall be deemed the only local government official for all political subdivisions for which the county treasurer has exclusive statutory authority to invest the funds thereof.

(4) "Funds" means:

(a) Public funds under the control of or in the custody of any local government official by virtue of the official's authority that are not immediately required to meet current demands;

(b) State funds that are the proceeds of bonds, notes, or other evidences of indebtedness authorized by the state finance committee under chapter 39.42 RCW or payments pursuant to financing contracts under chapter 39.94 RCW, when the investments are made in order to comply with the Internal Revenue Code of 1986, as amended. [1990 c 106 § 1; 1986 c 294 § 2.]

43.250.030 Public funds investment account. There is created a trust fund to be known as the public funds investment account. The account is to be separately accounted for and invested by the state treasurer. All moneys remitted under this chapter shall be deposited in this account. All earnings on any balances in the public funds investment account, less moneys for administration pursuant to RCW 43.250.060, shall be credited to the public funds investment account. [1991 1st sp.s. c 13 § 86; 1990 c 106 § 2; 1986 c 294 § 3.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

43.250.060 Investment pool—Generally. The state treasurer shall by rule prescribe the time periods for investments in the investment pool and the procedure for withdrawal of funds from the investment pool. The state treasurer shall promulgate such other rules as are deemed necessary for the efficient operation of the investment pool. The rules shall also provide for the administrative expenses of the investment pool, including repayment of the initial administrative costs financed out of the appropriation included in chapter 294, Laws of 1986, to be paid from the pool's earnings and for the interest earnings in excess of the expenses to be credited or paid to participants in the pool. The state treasurer may deduct the amounts necessary to reimburse the treasurer's office for the actual expenses the office incurs and to repay any funds appropriated and expended for the initial administrative costs of the pool. Any credits or payments to the participants shall be calculated and made in a manner which equitably reflects the differing amounts of the participants' respective deposits in the

investment pool fund and the differing periods of time for which the amounts were placed in the investment pool. [1990 c 106 § 3; 1986 c 294 § 6.]

43.250.070 Investment pool—Separate accounts for participants—Monthly status report. The state treasurer shall keep a separate account for each participant having funds in the investment pool. Each separate account shall record the individual amounts deposited in the investment pool, the date of withdrawals, and the earnings credited or paid. The state treasurer shall report monthly the status of the respective account to each participant having funds in the pool during the previous month. [1990 c 106 § 4; 1986 c 294 § 7.]

Chapter 43.280

COMMUNITY TREATMENT SERVICES FOR VICTIMS OF SEX OFFENDERS

Sections

43.280.010	Intent.
43.280.020	Grant program—Funding priority.
43.280.030	Applications.
43.280.040	Organizations eligible.
43.280.050	Applications—Minimum requirements.
43.280.060	Awarding of grants—Peer review committee.
43.280.070	Gifts, grants, and endowments.
43.280.900	Index, part headings not law—1990 c 3.
43.280.901	Severability—1990 c 3.
43.280.902	Effective dates—Application—1990 c 3.

43.280.010 Intent. The legislature recognizes the need to increase the services available to the victims of sex offenders. The legislature also recognizes that these services are most effectively planned and provided at the local level through the combined efforts of concerned community and citizens groups, treatment providers, and local government officials. The legislature further recognizes that adequate treatment for victims is not only a matter of justice for the victim, but also a method by which additional abuse can be prevented.

The legislature intends to enhance the community-based treatment services available to the victims of sex offenders by:

- (1) Providing funding support for local treatment programs which provide services to victims of sex offenders;
- (2) Providing technical assistance and support to help communities plan for and provide treatment services; and
- (3) Providing communities and local treatment providers with opportunities to share information about successful prevention and treatment programs. [1990 c 3 § 1201.]

43.280.020 Grant program—Funding priority. There is established in the department of community development a grant program to enhance the funding for treating the victims of sex offenders. Activities that can be funded through this grant program are limited to those that:

- (1) Provide effective treatment to victims of sex offenders;

(2) Increase access to and availability of treatment for victims of sex offenders, particularly if from underserved populations; and

(3) Create or build on efforts by existing community programs, coordinate those efforts, or develop cooperative efforts or other initiatives to make the most effective use of resources to provide treatment services to these victims.

Funding priority shall be given to those applicants that represent well-established existing programs and applicants that represent new programs that are being created in geographic areas where no programs presently exist. [1990 c 3 § 1203.]

43.280.030 Applications. Applications for funding under this chapter must:

(1) Present evidence demonstrating how the criteria in RCW 43.280.010 will be met and demonstrating the effectiveness of the proposal.

(2) Contain evidence of active participation of the community and its commitment to providing an effective treatment service for victims of sex offenders through the participation of local governments, tribal governments, human service and health organizations, and treatment entities and through meaningful involvement from others, including citizen groups. [1990 c 3 § 1204.]

43.280.040 Organizations eligible. Local governments, nonprofit community groups, and nonprofit treatment providers including organizations which provide services, such as emergency housing, counseling, and crisis intervention shall, among others, be eligible for grants under the program established in RCW 43.280.020. [1990 c 3 § 1205.]

43.280.050 Applications—Minimum requirements. At a minimum, grant applications must include the following:

(1) The geographic area from which the victims to be served are expected to come;

(2) A description of the extent and effect of the needs of these victims within the relevant geographic area;

(3) An explanation of how the funds will be used, their relationship to existing services available within the community, and the need that they will fulfill;

(4) An explanation of what organizations were involved in the development of the proposal; and

(5) An evaluation methodology. [1990 c 3 § 1206.]

43.280.060 Awarding of grants—Peer review committee. (1) Subject to funds appropriated by the legislature, the department of community development shall make awards under the grant program established by RCW 43.280.020.

(2) Awards shall be made competitively based on the purposes of and criteria in this chapter.

(3) To aid the department of community development in making its determination, the department shall form a peer review committee comprised of the executive administrator for the *crime victims' advocacy office and

individuals who have experience in the treatment of victims of predatory violent sex offenders. The peer review committee shall advise the department on the extent to which each eligible applicant meets the purposes and criteria of this chapter. The department shall consider this advice in making awards.

(4) Activities funded under this section may be considered for funding in future years, but shall be considered under the same terms and criteria as new activities. Funding under this chapter shall not constitute an obligation by the state of Washington to provide ongoing funding. [1990 c 3 § 1207.]

*Reviser's note: The section creating the crime victims' advocacy office, 1990 c 3 § 1202, was vetoed by the governor.

43.280.070 Gifts, grants, and endowments. The department of community development may receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of this chapter and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments. [1990 c 3 § 1208.]

43.280.900 Index, part headings not law—1990 c 3. See RCW 18.155.900.

43.280.901 Severability—1990 c 3. See RCW 18.155.901.

43.280.902 Effective dates—Application—1990 c 3. See RCW 18.155.902.

Chapter 43.290

OFFICE OF INTERNATIONAL RELATIONS AND PROTOCOL

Sections

43.290.005	Finding—Purpose.
43.290.010	Office created.
43.290.020	Authority of office.
43.290.900	Effective date—1991 c 24.

43.290.005 Finding—Purpose. The legislature finds that it is in the public interest to create an office of international relations and protocol in order to: Make international relations and protocol a broad-based, focused, and functional part of state government; develop and promote state policies that increase international literacy and cross-cultural understanding among Washington state's citizens; expand Washington state's international cooperation role in such areas as the environment, education, science, culture, and sports; establish coordinated methods for responding to the increasing number of inquiries by foreign governments and institutions seeking cooperative activities within Washington state; provide leadership in state government on international relations and assistance to the legislature and state elected officials on international issues affecting the state; assist with multistate international efforts; and coordinate and improve

communication and resource sharing among various state offices, agencies, and educational institutions with international programs.

It is the purpose of this chapter to bring these functions together in a new office under the office of the governor in order to establish a visible, coordinated, and comprehensive approach to international relations and protocol. [1991 c 24 § 1.]

Transfer of authority—1991 c 24: "All powers, duties, and functions of the office of international relations and protocol in the department of trade and economic development are transferred to the office of international relations and protocol under the office of the governor." [1991 c 24 § 8.]

43.290.010 Office created. The office of international relations and protocol is created under the office of the governor. The office shall serve as the state's official liaison and protocol office with foreign governments. The governor shall appoint a director of the office of international relations and protocol, who shall serve at the pleasure of the governor. Because of the diplomatic character of this office, the director and staff will be exempt from the provisions of chapter 41.06 RCW. The director will be paid a salary to be fixed by the governor in accordance with the provisions of RCW 43.03.040. The director may hire such personnel as may be necessary for the general administration of the office. To the extent permitted by law, state agencies may temporarily loan staff to the office of international relations and protocol to assist in carrying out the office's duties and responsibilities under this chapter. An arrangement to temporarily loan staff must have the approval of the staff members to be loaned and the directors of the office and the agencies involved in the loan. [1991 c 24 § 2.]

43.290.020 Authority of office. The office of international relations and protocol may:

(1) Create temporary advisory committees as necessary to deal with specific international issues. Advisory committee representation may include external organizations such as the Seattle consular corps, world affairs councils, public ports, world trade organizations, private nonprofit organizations dealing with international education or international environmental issues, organizations concerned with international understanding, businesses with experience in international relations, or other organizations deemed appropriate by the director.

(2) Accept or request grants or gifts from citizens and other private sources to be used to defray the costs of appropriate hosting of foreign dignitaries, including appropriate gift-giving and reciprocal gift-giving, or other activities of the office. The office shall open and maintain a bank account into which it shall deposit all money received under this subsection. Such money and the interest accruing thereon shall not constitute public funds, shall be kept segregated and apart from funds of the state, and shall not be subject to appropriation or allotment by the state or subject to chapter 43.88 RCW. [1991 c 24 § 4.]

43.290.900 Effective date—1991 c 24. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991. [1991 c 24 § 15.]

Title 44

STATE GOVERNMENT—LEGISLATIVE

Chapters

44.05 Washington State Redistricting Act.

44.28 Legislative budget committee.

Chapter 44.05

WASHINGTON STATE REDISTRICTING ACT

Sections

44.05.090 Redistricting plan.

44.05.090 Redistricting plan. In the redistricting plan:

(1) Districts shall have a population as nearly equal as is practicable, excluding nonresident military personnel, based on the population reported in the federal decennial census.

(2) To the extent consistent with subsection (1) of this section the commission plan should, insofar as practical, accomplish the following:

(a) District lines should be drawn so as to coincide with the boundaries of local political subdivisions and areas recognized as communities of interest. The number of counties and municipalities divided among more than one district should be as small as possible;

(b) Districts should be composed of convenient, contiguous, and compact territory. Land areas may be deemed contiguous if they share a common land border or are connected by a ferry, highway, bridge, or tunnel. Areas separated by geographical boundaries or artificial barriers that prevent transportation within a district should not be deemed contiguous; and

(c) Whenever practicable, a precinct shall be wholly within a single legislative district.

(3) The commission's plan and any plan adopted by the supreme court under RCW 44.05.100(4) shall provide for forty-nine legislative districts.

(4) The house of representatives shall consist of ninety-eight members, two of whom shall be elected from and run at large within each legislative district. The senate shall consist of forty-nine members, one of whom shall be elected from each legislative district.

(5) The commission shall exercise its powers to provide fair and effective representation and to encourage electoral competition. The commission's plan shall not be drawn purposely to favor or discriminate against any political party or group. [1990 c 126 § 1; 1983 c 16 § 9.]

Chapter 44.28
LEGISLATIVE BUDGET COMMITTEE

Sections
44.28.170 Repealed.

44.28.170 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Title 46
MOTOR VEHICLES

Chapters

- 46.01** Department of licensing.
- 46.04** Definitions.
- 46.08** General provisions.
- 46.09** Off-road and nonhighway vehicles.
- 46.10** Snowmobiles.
- 46.12** Certificates of ownership and registration.
- 46.16** Vehicle licenses.
- 46.20** Drivers' licenses—Identicators.
- 46.25** Uniform Commercial Driver's License Act.
- 46.29** Financial responsibility.
- 46.30** Mandatory liability insurance.
- 46.37** Vehicle lighting and other equipment.
- 46.44** Size, weight, load.
- 46.52** Accidents—Reports—Abandoned vehicles.
- 46.55** Abandoned, unauthorized, and junk vehicles—Tow truck operators.
- 46.61** Rules of the road.
- 46.63** Disposition of traffic infractions.
- 46.64** Enforcement.
- 46.65** Washington Habitual Traffic Offenders Act.
- 46.68** Disposition of revenue.
- 46.70** Unfair business practices—Dealers' licenses.
- 46.72** Transportation of passengers in for hire vehicles.
- 46.76** Motor vehicle transporters.
- 46.79** Hulk haulers and scrap processors.
- 46.80** Motor vehicle wreckers.
- 46.82** Driver training schools.
- 46.87** Proportional registration.
- 46.90** Washington Model Traffic Ordinance.

Chapter 46.01
DEPARTMENT OF LICENSING

Sections
46.01.030 Administration and improvement of certain motor vehicle laws.
46.01.090 Director—Appointment—Qualifications.
46.01.100 Organization of department.
46.01.140 County auditors, others, as special deputies and subagents of director—Disposition of application fees.
46.01.270 Destruction of records by county auditor.

46.01.030 Administration and improvement of certain motor vehicle laws. The department shall be responsible

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for administering and recommending the improvement of the motor vehicle laws of this state relating to:

- (1) driver examining and licensing;
- (2) driver improvement;
- (3) driver records;
- (4) financial responsibility;
- (5) certificates of ownership;
- (6) certificates of license registration and license plates;
- (7) proration and reciprocity;
- (8) liquid fuel tax collections;
- (9) licensing of dealers, motor vehicle transporters, motor vehicle wreckers, for hire vehicles, and drivers' schools;
- (10) general highway safety promotion in cooperation with the Washington state patrol and traffic safety commission;
- (11) such other activities as the legislature may provide. [1990 c 250 § 14; 1965 c 156 § 3.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.01.090 Director—Appointment—Qualifications. The department shall be under the control of an executive officer to be known as the director of licensing. The director shall be appointed by the governor, with the consent of the senate, and hold office at the pleasure of the governor. Directors shall be selected with special reference to their experience, capacity, and interest in the field of motor vehicle administration or highway safety. [1990 c 250 § 15; 1979 c 158 § 119; 1965 c 156 § 9.]

Severability—1990 c 250: See note following RCW 46.16.301.
Appointment of director: RCW 43.17.020.
Authority of director: RCW 43.24.010.

46.01.100 Organization of department. Directors shall organize the department in such manner as they may deem necessary to segregate and conduct the work of the department. [1990 c 250 § 16; 1965 c 156 § 10.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.01.140 County auditors, others, as special deputies and subagents of director—Disposition of application fees. (1) The county auditor, if appointed by the director of licensing shall carry out the provisions of this title relating to the licensing of vehicles and the issuance of vehicle license number plates under the direction and supervision of the director and may with the approval of the director appoint assistants as special deputies and subagents to accept applications and collect fees for vehicle licenses and transfers and to deliver vehicle license number plates.

(2) At any time any application is made to the director, the county auditor, or other agent pursuant to any law dealing with licenses, registration, or the right to operate any vehicle upon the public highways of this state, excluding applicants already paying such fee under RCW 46.16.070 or 46.16.085, the applicant shall pay to the director, county auditor, or other agent a fee of two dollars for each application in addition to any other fees

required by law. Applicants for certificates of ownership, including applicants paying fees under RCW 46.16.070 or 46.16.085, shall pay to the director, county auditor, or other agent a fee of three dollars in addition to any other fees required by law. These fees, if paid to the county auditor as agent of the director, or if paid to a subagent of the county auditor, shall be paid to the county treasurer in the same manner as other fees collected by the county auditor and credited to the county current expense fund. If the fee is paid to another agent of the director, the fee shall be used by the agent to defray his or her expenses in handling the application.

(3) A subagent is entitled to an additional service charge of two dollars. However, from July 1, 1991, through June 30, 1992, subagents shall collect a service fee of (a) five dollars and fifty cents for changes in a certificate of ownership, with or without registration renewal, or verification of record and preparation of an affidavit of lost title other than at the time of the title application or transfer and (b) two dollars and twenty-five cents for registration renewal only, issuing a transit permit, or any other service under this section.

(4) If the fee is collected by the state patrol as agent for the director, the fee so collected shall be certified to the state treasurer and deposited to the credit of the state patrol highway account. If the fee is collected by the department of transportation as agent for the director, the fee shall be certified to the state treasurer and deposited to the credit of the motor vehicle fund. All such fees collected by the director or branches of his office shall be certified to the state treasurer and deposited to the credit of the highway safety fund. [1991 c 339 § 16; 1990 c 250 § 89; 1988 c 12 § 1; 1987 c 302 § 1; 1985 c 380 § 12. Prior: 1983 c 77 § 1; 1983 c 26 § 1; 1980 c 114 § 2; 1979 c 158 § 122; 1975 1st ex.s. c 146 § 1; 1973 c 103 § 1; 1971 ex.s. c 231 § 9; 1971 ex.s. c 91 § 3; 1965 c 156 § 14; 1963 c 85 § 1; 1961 c 12 § 46.08.100; prior: 1955 c 89 § 3; 1937 c 188 § 27; RRS § 6312-27. Formerly RCW 46.08.100.]

Effective date—1991 c 339 §§ 16, 17: "Sections 16 and 17 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 339 § 34.]

Severability—1990 c 250: See note following RCW 46.16.301.

Severability—1987 c 302: "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." [1987 c 302 § 5.]

Effective date—1986 c 18; 1985 c 380: See RCW 46.87.901.

Severability—1985 c 380: See RCW 46.87.900.

Effective date—1971 ex.s. c 231: See note following RCW 46.01.130.

46.01.270 Destruction of records by county auditor. The county auditor may destroy applications for vehicle licenses and any copies of vehicle licenses issued after such records have been on file in the auditor's office for a period of eighteen months, unless otherwise directed by the director. [1991 c 339 § 18; 1967 c 32 § 4; 1961 c 12 § 46.08.130. Prior: 1937 c 188 § 78; RRS § 6312-78. Formerly RCW 46.08.130.]

Chapter 46.04 DEFINITIONS

Sections

46.04.303	Modular home.
46.04.304	Moped.
46.04.305	Motor homes.
46.04.330	Motorcycle.
46.04.400	Pedestrian.
46.04.408	Photograph, picture, negative.
46.04.580	Suspend.
46.04.670	Vehicle.

46.04.303 Modular home. "Modular home" means a factory-assembled structure designed primarily for use as a dwelling when connected to the required utilities that include plumbing, heating, and electrical systems contained therein, does not contain its own running gear, and must be mounted on a permanent foundation. A modular home does not include a mobile home or manufactured home. [1990 c 250 § 17; 1971 ex.s. c 231 § 5.]

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—1971 ex.s. c 231: See note following RCW 46.01.130.

46.04.304 Moped. "Moped" means a motorized device designed to travel with not more than three sixteen-inch or larger diameter wheels in contact with the ground, having fully operative pedals for propulsion by human power, and an electric or a liquid fuel motor with a cylinder displacement not exceeding fifty cubic centimeters which produces no more than two gross brake horsepower (developed by a prime mover, as measured by a brake applied to the driving shaft) that is capable of propelling the device at not more than thirty miles per hour on level ground.

The Washington state patrol may approve of and define as a "moped" a vehicle which fails to meet these specific criteria, but which is essentially similar in performance and application to motorized devices which do meet these specific criteria. [1990 c 250 § 18; 1987 c 330 § 702; 1979 ex.s. c 213 § 1.]

Severability—1990 c 250: See note following RCW 46.16.301.

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

46.04.305 Motor homes. "Motor homes" means motor vehicles originally designed, reconstructed, or permanently altered to provide facilities for human habitation, which include lodging and cooking or sewage disposal, and is enclosed within a solid body shell with the vehicle, but excludes a camper or like unit constructed separately and affixed to a motor vehicle. [1990 c 250 § 19; 1971 ex.s. c 231 § 3.]

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—1971 ex.s. c 231: See note following RCW 46.01.130.

46.04.330 Motorcycle. "Motorcycle" means a motor vehicle designed to travel on not more than three wheels in contact with the ground, on which the driver rides astride the motor unit or power train and is designed to

be steered with a handle bar, but excluding a farm tractor and a moped.

The Washington state patrol may approve of and define as a "motorcycle" a motor vehicle that fails to meet these specific criteria, but that is essentially similar in performance and application to motor vehicles that do meet these specific criteria. [1990 c 250 § 20; 1979 ex.s. c 213 § 2; 1961 c 12 § 46.04.330. Prior: 1959 c 49 § 34; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part; 1923 c 181 § 1, part; 1921 c 96 § 2, part; 1919 c 59 § 1, part; 1917 c 155 § 1, part; 1915 c 142 § 2, part; RRS § 6313, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.04.400 Pedestrian. "Pedestrian" means any person who is afoot or who is using a wheelchair or a means of conveyance propelled by human power other than a bicycle. [1990 c 241 § 1; 1961 c 12 § 46.04.400. Prior: 1959 c 49 § 41; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.408 Photograph, picture, negative. "Photograph," along with the terms "picture" and "negative," means a pictorial representation, whether produced through photographic or other means, including, but not limited to, digital data imaging. [1990 c 250 § 21.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.04.580 Suspend. "Suspend," in all its forms, means invalidation for any period less than one calendar year and thereafter until reinstatement. However, under RCW 46.61.515 the invalidation may last for more than one calendar year. [1990 c 250 § 22; 1961 c 12 § 46.04-.580. Prior: 1959 c 49 § 62; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.04.670 Vehicle. "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, including bicycles. The term does not include devices other than bicycles moved by human or animal power or used exclusively upon stationary rails or tracks. Mopeds shall be considered vehicles or motor vehicles only for the purposes of chapter 46.12 RCW, but not for the purposes of chapter 46.70 RCW. Bicycles shall not be considered vehicles for the purposes of chapter 46.12, 46.16, or 46.70 RCW. [1991 c 214 § 2; 1979 ex.s. c 213 § 4; 1961 c 12 § 46.04.670. Prior: 1959 c 49 § 72; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

Chapter 46.08 GENERAL PROVISIONS

Sections	
46.08.010	State preempts licensing field.
46.08.172	State capitol vehicle parking account—Parking fees—Disposition of revenue.

46.08.010 State preempts licensing field. The provisions of this title relating to the certificate of ownership, certificate of license registration, vehicle license, vehicle license plates and vehicle operator's license shall be exclusive and no political subdivision of the state of Washington shall require or issue any licenses or certificates for the same or a similar purpose except as provided in RCW 82.80.020, nor shall any city or town in this state impose a tax, license, or other fee upon vehicles operating exclusively between points outside of such city or town limits, and to points therein. [1990 c 42 § 207; 1961 c 12 § 46.08.010. Prior: 1937 c 188 § 75; RRS § 6312-75.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

46.08.172 State capitol vehicle parking account—Parking fees—Disposition of revenue. There is hereby established an account in the state treasury to be known as the "state capitol vehicle parking account". The director of the department of general administration shall establish equitable and consistent parking rental fees for state-owned or leased property, to be charged to employees, visitors, clients, service providers, and others, that reflect the legislature's intent to reduce state subsidization of parking. All fees shall take into account the market rate of comparable privately owned rental parking, as determined by the director. All unpledged parking rental income collected by the department of general administration from rental of parking space on the capitol grounds and the east capitol site shall be deposited in the "state capitol vehicle parking account".

The director may delegate the responsibility for the collection of parking fees to other agencies of state government when cost-effective.

The "state capitol vehicle parking account" shall be used to pay costs incurred in the operation, maintenance, regulation and enforcement of vehicle parking and parking facilities. [1991 1st sp.s. c 31 § 12; 1991 1st sp.s. c 13 § 41; 1988 ex.s. c 2 § 901; 1985 c 57 § 59; 1984 c 258 § 323; 1963 c 158 § 1.]

Reviser's note: This section was amended by 1991 1st sp.s. c 13 § 41 and by 1991 1st sp.s. c 31 § 12, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1991 1st sp.s. c 31: See RCW 43.991.900.

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

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

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

Chapter 46.09

OFF-ROAD AND NONHIGHWAY VEHICLES

Sections

46.09.030	Use permits—Issuance—Fees.
46.09.080	ORV dealers—Permits—Fees—Number plates—Title application—Violations.
46.09.140	Accident reports.
46.09.170	Refunds from motor vehicle fund—Distribution—Use.
46.09.240	Administration and distribution of ORV moneys.
46.09.290	Repealed.

46.09.030 Use permits—Issuance—Fees. The department shall provide for the issuance of use permits for off-road vehicles and may appoint agents for collecting fees and issuing permits. The department shall charge each applicant for registration the actual cost of the decal. The department shall make available replacement decals for a fee equivalent to the actual cost of the decals. The provisions of RCW 46.01.130 and 46.01.140 apply to the issuance of use permits for off-road vehicles as they do to the issuance of vehicle licenses, the appointment of agents and the collection of application fees. [1990 c 250 § 23; 1986 c 206 § 2; 1977 ex.s. c 220 § 2; 1972 ex.s. c 153 § 4; 1971 ex.s. c 47 § 8.]

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—1986 c 206: See note following RCW 46.09.020.

Purpose—1972 ex.s. c 153: See RCW 67.32.080.

46.09.080 ORV dealers—Permits—Fees—Number plates—Title application—Violations. (1) Each dealer of off-road vehicles in this state who does not have a current "dealer's plate" for vehicle use pursuant to chapter 46.70 RCW shall obtain an ORV dealer permit from the department in such manner and upon such forms as the department shall prescribe. Upon receipt of an application for an ORV dealer permit and the fee under subsection (2) of this section, the dealer shall be registered and an ORV dealer permit number assigned.

(2) The fee for ORV dealer permits shall be twenty-five dollars per year, which covers all of the off-road vehicles owned by a dealer and not rented. Off-road vehicles rented on a regular, commercial basis by a dealer shall have separate use permits.

(3) Upon the issuance of an ORV dealer permit each dealer may purchase, at a cost to be determined by the department, ORV dealer number plates of a size and color to be determined by the department, that contain the dealer ORV permit number assigned to the dealer. Each off-road vehicle operated by a dealer, dealer representative, or prospective customer for the purposes of testing or demonstration shall display such number plates assigned pursuant to the dealer permit provisions in chapter 46.70 RCW or this section, in a manner prescribed by the department.

(4) No dealer, dealer representative, or prospective customer shall use such number plates for any purpose other than the purpose prescribed in subsection (3) of this section.

(5) ORV dealer permit numbers shall be nontransferable.

(6) It is unlawful for any dealer to sell any off-road vehicle at wholesale or retail or to test or demonstrate any off-road vehicle within the state unless he has a motor vehicle dealers' license pursuant to chapter 46.70 RCW or an ORV dealer permit number in accordance with this section.

(7) When an ORV is sold by a dealer, the dealer shall apply for title in the purchaser's name within fifteen days following the sale. [1990 c 250 § 24; 1986 c 206 § 5; 1977 ex.s. c 220 § 7; 1972 ex.s. c 153 § 9; 1971 ex.s. c 47 § 13.]

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—1986 c 206: See note following RCW 46.09.020.

Purpose—1972 ex.s. c 153: See RCW 67.32.080.

46.09.140 Accident reports. The operator of any nonhighway vehicle involved in any accident resulting in injury to or death of any person, or property damage to another to an apparent extent equal to or greater than the minimum amount established by rule adopted by the chief of the Washington state patrol in accordance with chapter 46.52 RCW, or a person acting for the operator shall submit such reports as are required under chapter 46.52 RCW, and the provisions of chapter 46.52 RCW applies to the reports when submitted. [1990 c 250 § 25; 1977 ex.s. c 220 § 12; 1971 ex.s. c 47 § 19.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.09.170 Refunds from motor vehicle fund—Distribution—Use. (1) From time to time, but at least once each year, the state treasurer shall refund from the motor vehicle fund one percent of the motor vehicle fuel tax revenues collected under chapter 82.36 RCW, based on the tax rate in effect January 1, 1990, less proper deductions for refunds and costs of collection as provided in RCW 46.68.090. The treasurer shall place these funds in the general fund as follows:

(a) Forty percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of natural resources solely for planning, maintenance, and management of ORV recreation facilities, nonhighway roads, and nonhighway road recreation facilities. The funds under this subsection shall be expended in accordance with the following limitations:

(i) Not more than five percent may be expended for information programs under this chapter;

(ii) Not less than ten percent and not more than fifty percent may be expended for ORV recreation facilities;

(iii) Not more than twenty-five percent may be expended for maintenance of nonhighway roads;

(iv) Not more than fifty percent may be expended for nonhighway road recreation facilities;

(v) Ten percent shall be transferred to the interagency committee for outdoor recreation for grants to law enforcement agencies in those counties where the department of natural resources maintains ORV facilities. This amount is in addition to those distributions made by the interagency committee for outdoor recreation under (d)(i) of this subsection;

(b) Three and one-half percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of wildlife solely for the acquisition, planning, development, maintenance, and management of nonhighway roads and recreation facilities;

(c) Two percent shall be credited to the ORV and nonhighway vehicle account and administered by the parks and recreation commission solely for the maintenance and management of ORV use areas and facilities; and

(d) Fifty-four and one-half percent, together with the funds received by the interagency committee for outdoor recreation under RCW 46.09.110, shall be credited to the outdoor recreation account to be administered by the committee for planning, acquisition, development, maintenance, and management of ORV recreation facilities and nonhighway road recreation facilities; ORV user education and information; and ORV law enforcement programs. The funds under this subsection shall be expended in accordance with the following limitations:

(i) Not more than twenty percent may be expended for ORV education, information, and law enforcement programs under this chapter;

(ii) Not less than an amount equal to the funds received by the interagency committee for outdoor recreation under RCW 46.09.110 and not more than sixty percent may be expended for ORV recreation facilities;

(iii) Not more than twenty percent may be expended for nonhighway road recreation facilities.

(2) On a yearly basis an agency may not, except as provided in RCW 46.09.110, expend more than ten percent of the funds it receives under this chapter for general administration expenses incurred in carrying out this chapter. [1990 c 42 § 115; 1988 c 36 § 25; 1986 c 206 § 8; 1979 c 158 § 130; 1977 ex.s. c 220 § 14; 1975 1st ex.s. c 34 § 1; 1974 ex.s. c 144 § 3; 1972 ex.s. c 153 § 15; 1971 ex.s. c 47 § 22.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—1986 c 206: See note following RCW 46.09.020.

Effective date—1975 1st ex.s. c 34: "This 1975 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 July 1, 1975." [1975 1st ex.s. c 34 § 4.]

Purpose—1972 ex.s. c 153: See RCW 67.32.080.

46.09.240 Administration and distribution of ORV moneys. (1) After deducting administrative expenses and the expense of any programs conducted under this chapter, the interagency committee for outdoor recreation shall, at least once each year, distribute the funds it receives under RCW 46.09.110 and 46.09.170 to state agencies, counties, municipalities, federal agencies, and Indian tribes.

The committee shall adopt rules governing applications for funds administered by the agency under this chapter and shall determine the amount of money distributed to each applicant. Agencies receiving funds under this chapter for capital purposes shall consider the

possibility of contracting with the state parks and recreation commission, the department of natural resources, or other federal, state, and local agencies to employ the youth development and conservation corps or other youth crews in completing the project.

(2) The interagency committee shall require each applicant for land acquisition or development funds under this section to conduct, before submitting the application, a public hearing in the nearest town of five hundred population or more, and publish notice of such hearing on the same day of each week for two consecutive weeks as follows:

(a) In the newspaper of general circulation published nearest the proposed project;

(b) In the newspaper having the largest circulation in the county or counties where the proposed project is located; and

(c) If the proposed project is located in a county with a population of less than forty thousand, the notice shall also be published in the newspaper having the largest circulation published in the nearest county that has a population of forty thousand or more.

(3) The notice shall state that the purpose of the hearing is to solicit comments regarding an application being prepared for submission to the interagency committee for outdoor recreation for acquisition or development funds under the off-road and nonhighway vehicle program. The applicant shall file notice of the hearing with the department of ecology at the main office in Olympia and shall comply with the State Environmental Policy Act, chapter 43.21C RCW. A written record and a magnetic tape recording of the hearing shall be included in the application. [1991 c 363 § 122; 1986 c 206 § 9; 1977 ex.s. c 220 § 17.]

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

Effective date—1986 c 206: See note following RCW 46.09.020.

46.09.290 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 46.10 SNOWMOBILES

Sections

46.10.050	Snowmobile dealers' registration—Fee—Dealer number plates, use—Sale or demonstration unlawful without registration.
46.10.075	Snowmobile account—Deposits—Appropriations, use.
46.10.140	Accident reports.
46.10.170	Proportion of motor vehicle fuel tax and snowmobile fuel tax—Report—Cost offset.

46.10.050 Snowmobile dealers' registration—Fee—Dealer number plates, use—Sale or demonstration unlawful without registration. (1) Each dealer of snowmobiles in this state shall register with the department in such manner and upon such forms as the department shall prescribe. Upon receipt of a dealer's

application for registration and the registration fee provided for in subsection (2) of this section, such dealer shall be registered and a registration number assigned.

(2) The registration fee for dealers shall be twenty-five dollars per year, and such fee shall cover all of the snowmobiles offered by a dealer for sale and not rented on a regular, commercial basis: PROVIDED, That snowmobiles rented on a regular commercial basis by a dealer shall be registered separately under the provisions of RCW 46.10.020, 46.10.040, 46.10.060, and 46.10.070.

(3) Upon registration each dealer may purchase, at a cost to be determined by the department, dealer number plates of a size and color to be determined by the department, which shall contain the registration number assigned to that dealer. Each snowmobile operated by a dealer, dealer representative, or prospective customer for the purposes of demonstration or testing shall display such number plates in a clearly visible manner.

(4) No person other than a dealer, dealer representative, or prospective customer shall display a dealer number plate, and no dealer, dealer representative, or prospective customer shall use a dealer's number plate for any purpose other than the purposes described in subsection (3) of this section.

(5) Dealer registration numbers are nontransferable.

(6) It is unlawful for any dealer to sell any snowmobile at wholesale or retail, or to test or demonstrate any snowmobile, within the state, unless registered in accordance with the provisions of this section. [1990 c 250 § 26; 1982 c 17 § 5; 1971 ex.s. c 29 § 5.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.10.075 Snowmobile account—Deposits—Appropriations, use. There is created a snowmobile account within the state treasury. Snowmobile registration fees, monetary civil penalties from snowmobile dealers, and snowmobile fuel tax moneys collected under this chapter and in excess of the amounts fixed for the administration of the registration and fuel tax provisions of this chapter shall be deposited in the snowmobile account and shall be appropriated only to the state parks and recreation commission for the administration and coordination of this chapter. [1991 1st sp.s. c 13 § 9; 1985 c 57 § 61; 1982 c 17 § 6; 1979 ex.s. c 182 § 7.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

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

46.10.140 Accident reports. The operator of any snowmobile involved in any accident resulting in injury to or death of any person, or property damage to an apparent extent equal to or greater than the minimum amount established by rule adopted by the Washington state patrol in accordance with chapter 46.52 RCW, or a person acting for the operator, or the owner of the snowmobile having knowledge of the accident, if the operator of the snowmobile is unknown, shall submit such reports as are required under chapter 46.52 RCW, and

the provisions of chapter 46.52 RCW applies to the reports when submitted. [1990 c 250 § 27; 1971 ex.s. c 29 § 14.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.10.170 Proportion of motor vehicle fuel tax and snowmobile fuel tax—Report—Cost offset. From time to time, but at least once each biennium, the department shall determine the amount or proportion of moneys paid to it as motor vehicle fuel tax, based on the tax rate in effect January 1, 1990, which is tax on snowmobile fuel. Such determination may be made in any manner which is, in the judgment of the director, reasonable, but the manner used to make such determination shall be reported at the end of each biennium to the legislature. To offset the actual cost of making such determination the treasurer shall retain in, and the department is authorized to expend from, the motor vehicle fund a sum equal to such actual cost. [1990 c 42 § 117; 1979 ex.s. c 182 § 13; 1971 ex.s. c 29 § 17.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Chapter 46.12 CERTIFICATES OF OWNERSHIP AND REGISTRATION

Sections	
46.12.030	Certificate of ownership—Application—Contents—Inspection of vehicle.
46.12.040	Certificate of ownership—Application and inspection fees.
46.12.050	Issuance of certificates—Contents.
46.12.070	Destruction of vehicle—Surrender of certificates, penalty—Notice of settlement by insurance company.
46.12.101	Transfer of ownership, how perfected—Penalty, exceptions.
46.12.120	Duty when purchaser or transferee is a dealer.
46.12.124	Odometer disclosure statement.
46.12.125	Repealed.
46.12.140	Certificates of ownership for dealers' used vehicles—Consignments.
46.12.151	Procedure when department unsatisfied as to ownership and security interests.
46.12.181	Duplicate for lost, stolen, mutilated, etc., certificates.
46.12.295	Mobile homes—Tiling functions transferred to department of community development.
46.12.360	Reimbursement to owner of stolen vehicle.
46.12.380	Disclosure of names and addresses of individual vehicle owners.
46.12.390	Disclosure violations, penalties.

46.12.030 Certificate of ownership—Application—Contents—Inspection of vehicle. The application for certificate of ownership shall be upon a blank form to be furnished by the department and shall contain:

(1) A full description of the vehicle, which shall contain the proper vehicle identification number, the number of miles indicated on the odometer at the time of delivery of the vehicle, and any distinguishing marks of identification;

(2) The name and address of the person who is to be the registered owner of the vehicle and, if the vehicle is subject to a security interest, the name and address of the secured party;

(3) Such other information as the department may require. The department may in any instance, in addition to the information required on the application, require additional information and a physical examination of the vehicle or of any class of vehicles, or either. A physical examination of the vehicle is mandatory if it previously was registered in any other state or country. The inspection must verify that the vehicle identification number is genuine and agrees with the number shown on the foreign title and registration certificate. If the vehicle is from a jurisdiction that does not issue titles, the inspection must verify that the vehicle identification number is genuine and agrees with the number shown on the registration certificate. The inspection must also confirm that the license plates on the vehicle are those assigned to the vehicle by the jurisdiction in which the vehicle was previously licensed. The inspection must be made by a member of the Washington state patrol or other person authorized by the department to make such inspections.

The application shall be subscribed by the registered owner and be sworn to by that applicant in the manner described by RCW 9A.72.085. The department shall retain the application in either the original, computer, or photostatic form. [1990 c 238 § 1; 1975 c 25 § 8; 1974 ex.s. c 128 § 1; 1972 ex.s. c 99 § 2; 1967 c 32 § 8; 1961 c 12 § 46.12.030. Prior: 1947 c 164 § 1, part; 1937 c 188 § 3, part; Rem. Supp. 1947 § 6312-2, part.]

Effective date, implementation—1990 c 238: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect May 1, 1990. The director of licensing shall immediately take such steps as are necessary to ensure that this act is implemented on its effective date." [1990 c 238 § 9.]

Effective date—1974 ex.s. c 128: "This 1974 amendatory act shall take effect July 1, 1974." [1974 ex.s. c 128 § 3.]

Notice of liability insurance requirement: RCW 46.16.212.

46.12.040 Certificate of ownership—Application and inspection fees. The application accompanied by a draft, money order, certified bank check, or cash for one dollar and twenty-five cents, together with the last preceding certificates or other satisfactory evidence of ownership, shall be forwarded to the director.

The fee shall be in addition to any other fee for the license registration of the vehicle. The certificate of ownership shall not be required to be renewed annually, or at any other time, except as by law provided.

In addition to the application fee and any other fee for the license registration of a vehicle, there shall be collected from the applicant an inspection fee whenever a physical examination of the vehicle is required as a part of the vehicle licensing or titling process.

For vehicles previously registered in any other state or country, the inspection fee shall be fifteen dollars and shall be deposited in the motor vehicle fund. For all

other vehicles requiring a physical examination, the inspection fee shall be twenty dollars and shall be deposited in the motor vehicle fund. [1990 c 238 § 2; 1989 c 110 § 1; 1975 1st ex.s. c 138 § 1; 1974 ex.s. c 128 § 2; 1961 c 12 § 46.12.040. Prior: 1951 c 269 § 1; 1947 c 164 § 1, part; 1937 c 188 § 3, part; Rem. Supp. 1947 § 6312-3, part.]

Effective date, implementation—1990 c 238: See note following RCW 46.12.030.

Effective date—1974 ex.s. c 128: See note following RCW 46.12.030.

46.12.050 Issuance of certificates—Contents. The department, if satisfied from the statements upon the application that the applicant is the legal owner of the vehicle or otherwise entitled to have the certificate of ownership thereof in the applicant's name, shall thereupon issue an appropriate certificate of ownership, over the director's signature, authenticated by seal, and a new certificate of license registration if certificate of license registration is required.

Both the certificate of ownership and the certificate of license registration shall contain upon the face thereof, the date of application, the registration number assigned to the registered owner and to the vehicle, the name and address of the registered owner and legal owner, the vehicle identification number, and such other description of the vehicle and facts as the department shall require, and in addition thereto, if the vehicle described in such certificates shall have ever been licensed and operated as an exempt vehicle or a taxicab, or if it is less than four years old and has been rebuilt after having been totaled out by an insurance carrier, such fact shall be clearly shown thereon. All certificates of ownership of motor vehicles issued after April 30, 1990, shall reflect the odometer reading as provided by the odometer disclosure statement submitted with the title application involving a change of registration.

A blank space shall be provided on the face of the certificate of license registration for the signature of the registered owner.

Upon issuance of the certificate of license registration and certificate of ownership and upon any reissue thereof, the department shall deliver the certificate of license registration to the registered owner and the certificate of ownership to the legal owner, or both to the person who is both the registered owner and legal owner. [1990 c 238 § 3; 1975 c 25 § 9; 1967 c 32 § 9; 1961 c 12 § 46.12.050. Prior: 1959 c 166 § 1; 1947 c 164 § 2; 1937 c 188 § 4; Rem. Supp. 1947 § 6312-4.]

Effective date, implementation—1990 c 238: See note following RCW 46.12.030.

46.12.070 Destruction of vehicle—Surrender of certificates, penalty—Notice of settlement by insurance company. Upon the destruction of any vehicle issued a certificate of ownership under this chapter or a license registration under chapter 46.16 RCW, the registered owner and the legal owner shall forthwith and within fifteen days thereafter forward and surrender the certificate to the department, together with a statement

of the reason for the surrender and the date and place of destruction. Failure to notify the department or the possession by any person of any such certificate for a vehicle so destroyed, after fifteen days following its destruction, is prima facie evidence of violation of the provisions of this chapter and constitutes a gross misdemeanor.

Any insurance company settling an insurance claim on a vehicle that has been issued a certificate of ownership under this chapter or a certificate of license registration under chapter 46.16 RCW as a total loss, less salvage value, shall notify the department thereof within fifteen days after the settlement of the claim. Notification shall be provided regardless of where or in what jurisdiction the total loss occurred. [1990 c 250 § 28; 1961 c 12 § 46.12.070. Prior: 1959 c 166 § 4; prior: 1947 c 164 § 3(b); 1939 c 182 § 1(b); 1937 c 188 § 5(b); Rem. Supp. 1947 § 6312-5(b).]

Severability—1990 c 250: See note following RCW 46.16.301.

46.12.101 Transfer of ownership, how perfected—Penalty, exceptions. A transfer of ownership in a motor vehicle is perfected by compliance with the requirements of this section.

(1) If an owner transfers his or her interest in a vehicle, other than by the creation, deletion, or change of a security interest, the owner shall, at the time of the delivery of the vehicle, execute an assignment to the transferee and provide an odometer disclosure statement under RCW 46.12.124 on the certificate of ownership or as the department otherwise prescribes, and cause the certificate and assignment to be transmitted to the transferee. Within five days, excluding Saturdays, Sundays, and state and federal holidays, the owner shall notify the department in writing, on the appropriate form, of the date of the sale or transfer, the name and address of the owner and of the transferee, and such description of the vehicle, including the vehicle identification number, the license plate number, or both, as may be required in the appropriate form provided for that purpose by the department.

(2) The requirements of subsection (1) of this section to provide an odometer disclosure statement apply to the transfer of vehicles held for lease when transferred to a lessee and then to the lessor at the end of the leasehold and to vehicles held in a fleet when transferred to a purchaser.

(3) Except as provided in RCW 46.12.120 the transferee shall within fifteen days after delivery to the transferee of the vehicle, execute the application for a new certificate of ownership in the same space provided therefor on the certificate or as the department prescribes, and cause the certificates and application to be transmitted to the department.

(4) Upon request of the owner or transferee, a secured party in possession of the certificate of ownership shall, unless the transfer was a breach of its security agreement, either deliver the certificate to the transferee for transmission to the department or, when the secured party receives the owner's assignment from the transferee, it shall transmit the transferee's application for a

new certificate, the existing certificate, and the required fee to the department. Compliance with this section does not affect the rights of the secured party.

(5) If a security interest is reserved or created at the time of the transfer, the certificate of ownership shall be retained by or delivered to the person who becomes the secured party, and the parties shall comply with the provisions of RCW 46.12.170.

(6) If the purchaser or transferee fails or neglects to make application to transfer the certificate of ownership and license registration within fifteen days after the date of delivery of the vehicle, he or she shall on making application for transfer be assessed a twenty-five dollar penalty on the sixteenth day and two dollars additional for each day thereafter, but not to exceed one hundred dollars. The director may by rule establish conditions under which the penalty will not be assessed when an application for transfer is delayed for reasons beyond the control of the purchaser. Conditions for not assessing the penalty may be established for but not limited to delays caused by:

(a) The department requesting additional supporting documents;

(b) Extended hospitalization or illness of the purchaser;

(c) Failure of a legal owner to release his or her interest;

(d) Failure, negligence, or nonperformance of the department, auditor, or subagent.

Failure or neglect to make application to transfer the certificate of ownership and license registration within forty-five days after the date of delivery of the vehicle is a misdemeanor.

(7) Upon receipt of an application for reissue or replacement of a certificate of ownership and transfer of license registration, accompanied by the endorsed certificate of ownership or other documentary evidence as is deemed necessary, the department shall, if the application is in order and if all provisions relating to the certificate of ownership and license registration have been complied with, issue new certificates of title and license registration as in the case of an original issue and shall transmit the fees together with an itemized detailed report to the state treasurer, to be deposited in the motor vehicle fund.

(8) Once each quarter the department shall report to the department of revenue a list of those vehicles for which a seller's report has been received but no transfer of title has taken place. [1991 c 339 § 19; 1990 c 238 § 4; 1987 c 127 § 1; 1984 c 39 § 1; 1972 ex.s. c 99 § 1; 1969 ex.s. c 281 § 38; 1969 ex.s. c 42 § 1; 1967 c 140 § 7.]

Effective date, implementation—1990 c 238: See note following RCW 46.12.030.

Effective date—1967 c 140: See note following RCW 46.12.010.

Definitions: RCW 46.12.005.

46.12.120 Duty when purchaser or transferee is a dealer. (1) If the purchaser or transferee is a dealer he shall, on selling or otherwise disposing of the vehicle,

promptly execute the assignment and warranty of title, in such form as the director shall prescribe.

(2) The assignment and warranty shall show any secured party holding a security interest created or reserved at the time of resale, to which shall be attached the assigned certificates of ownership and license registration received by the dealer. The dealer shall mail or deliver them to the department with the transferee's application for the issuance of new certificates of ownership and license registration. The title certificate issued for a vehicle possessed by a dealer and subject to a security interest shall be delivered to the secured party who upon request of the dealer's transferee shall, unless the transfer was a breach of the security agreement, either deliver the certificate to the transferee for transmission to the department, or upon receipt from the transferee of the owner's bill of sale or sale document, the transferee's application for a new certificate and the required fee, mail or deliver to the department. Failure of a dealer to deliver the title certificate to the secured party does not affect perfection of the security interest. [1990 c 238 § 5; 1975 c 25 § 11; 1972 ex.s. c 99 § 3; 1967 c 140 § 2; 1961 c 12 § 46.12.120. Prior: 1959 c 166 § 10; prior: 1947 c 164 § 4(c); 1937 c 188 § 6(c); Rem. Supp. 1947 § 6312-6(c).]

Effective date, implementation—1990 c 238: See note following RCW 46.12.030.

Effective date—1967 c 140: See note following RCW 46.12.010.

Definitions: RCW 46.12.005.

46.12.124 Odometer disclosure statement. (1) The department shall require an odometer disclosure statement to accompany every application for a certificate of ownership, unless specifically exempted. If the certificate of ownership was issued after April 30, 1990, a secure odometer statement is required, unless specifically exempted. The statements shall include, at a minimum, the following:

(a) The miles shown on the odometer at the time of transfer of ownership;

(b) The date of transfer of ownership;

(c) One of the following statements:

(i) The mileage reflected is actual to the best of transferor's knowledge;

(ii) The odometer reading exceeds the mechanical limits of the odometer to the best of the transferor's knowledge; or

(iii) The odometer reading is not the actual mileage;

If the odometer reading is under one hundred thousand miles, the only options that can be certified are "actual to the best of the transferor's knowledge" or "not the actual mileage." If the odometer reading is one hundred thousand miles or more, the options "actual to the best of the transferor's knowledge" or "not the actual mileage" cannot be used unless the odometer has six digit capability;

(d) A complete description of the vehicle, including the:

(i) Model year;

(ii) Make;

(iii) Series and body type (model);

(iv) Vehicle identification number;

(v) License plate number and state (optional);

(e) The name, address, and signature of the transferor, in accordance with the following conditions:

(i) Only one registered owner is required to complete the odometer disclosure statement;

(ii) When the registered owner is a business, both the business name and a company representative's name must be shown on the odometer disclosure statement;

(f) The name and address of the transferee and the transferee's signature to acknowledge the transferor's information. If the transferee represents a company, both the company name and the agent's name must be shown on the odometer disclosure statement;

(g) A statement that the notice is required by the federal Truth in Mileage Act of 1986; and

(h) A statement that failure to complete the odometer disclosure statement or providing false information may result in fines or imprisonment or both.

(2) The transferee shall return a signed copy of the odometer disclosure statement to the transferor at the time of transfer of ownership.

(3) The following vehicles are not subject to the odometer disclosure requirement at the time of ownership transfer:

(a) A vehicle having a declared gross vehicle weight of more than sixteen thousand pounds;

(b) A vehicle that is not self-propelled;

(c) A vehicle that is ten years old or older;

(d) A vehicle sold directly by a manufacturer to a federal agency in conformity with contract specifications; or

(e) A new vehicle before its first retail sale. [1990 c 238 § 6.]

Effective date, implementation—1990 c 238: See note following RCW 46.12.030.

46.12.125 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

46.12.140 Certificates of ownership for dealers' used vehicles—Consignments. In the case of vehicle dealers a separate certificate of ownership, either of the dealer or of the dealer's immediate vendor properly assigned, shall be required covering each used vehicle kept in the dealer's possession. In the case of consigned vehicles, the vehicle dealer may possess a completed consignment contract that includes a guaranteed title from the seller in lieu of the required certificate of ownership. [1990 c 250 § 29; 1961 c 12 § 46.12.140. Prior: 1959 c 166 § 12; prior: 1947 c 164 § 4(e); 1937 c 188 § 6(e); Rem. Supp. 1947 § 6312-6(e).]

Severability—1990 c 250: See note following RCW 46.16.301.

46.12.151 Procedure when department unsatisfied as to ownership and security interests. If the department is not satisfied as to the ownership of the vehicle or that there are no undisclosed security interests in it, the department may register the vehicle but shall either:

(1) Withhold issuance of a certificate of ownership for a period of three years or until the applicant presents documents reasonably sufficient to satisfy the department as to the applicant's ownership of the vehicle and that there are no undisclosed security interests in it; or

(2) As a condition of issuing a certificate of ownership, require the applicant to file with the department a bond for a period of three years in the form prescribed by the department and executed by the applicant. The bond shall be in an amount equal to one and one-half times the value of the vehicle as determined by the department and conditioned to indemnify any prior owner and secured party and any subsequent purchaser of the vehicle or person acquiring any security interest in it, and their respective successors in interest, against any expense, loss or damage, including reasonable attorney's fees, by reason of the issuance of the certificate of ownership of the vehicle or on account of any defect in or undisclosed security interest upon the right, title and interest of the applicant in and to the vehicle. Any such interested person has a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. At the end of three years or prior thereto if the vehicle is no longer registered in this state or when satisfactory evidence of ownership is surrendered to the department, the owner may apply to the department for a replacement certificate of ownership without reference to the bond. [1990 c 250 § 30; 1967 c 140 § 9.]

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—1967 c 140: See note following RCW 46.12.010.

Definitions: RCW 46.12.005.

46.12.181 Duplicate for lost, stolen, mutilated, etc., certificates. If a certificate of ownership or a certificate of license registration is lost, stolen, mutilated or destroyed or becomes illegible, the first priority secured party or, if none, the owner or legal representative of the owner named in the certificate, as shown by the records of the department, shall promptly make application for and may obtain a duplicate upon tender of one dollar and upon furnishing information satisfactory to the department. The duplicate certificate of ownership or license registration shall contain the legend, "This is a duplicate certificate." It shall be mailed to the first priority secured party named in it or, if none, to the owner.

A person recovering an original certificate of ownership or title registration for which a duplicate has been issued shall promptly surrender the original certificate to the department. [1990 c 250 § 31; 1969 ex.s. c 170 § 1; 1967 c 140 § 8.]

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—1967 c 140: See note following RCW 46.12.010.

Definitions: RCW 46.12.005.

46.12.295 Mobile homes—Titling functions transferred to department of community development. The department of licensing shall transfer all titling functions pertaining to mobile homes to the housing division of the department of community development by July 1, 1991.

The department of licensing shall transfer all books, records, files, and documents pertaining to mobile home titling to the department of community development. The directors of the departments may immediately take such steps as are necessary to ensure that *this act is implemented on June 7, 1990. [1990 c 176 § 3.]

*Reviser's note: For codification of "this act" [1990 c 176], see note following RCW 43.22.495.

Department of community development duties: RCW 43.63A.460.

46.12.360 Reimbursement to owner of stolen vehicle.

A vehicle owner shall be reimbursed from the motor vehicle fund when: (1) The vehicle identification number was physically inspected and verified pursuant to RCW 46.12.030(3); and (2) the vehicle is determined subsequently to have been reported stolen at the time of the inspection. Such reimbursement shall be for the value of the vehicle: PROVIDED, That no claim shall be allowed under this section following a satisfactory showing by the department that errors, omissions, or transpositions were made in entering the vehicle's identity in the stolen vehicle file. [1990 c 42 § 325; 1980 c 32 § 7; 1975-'76 2nd ex.s. c 91 § 7.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—Transfer of moneys—1980 c 32 § 7: "Section 7 of this act shall take effect on September 1, 1981. Any moneys held on that date in the account disestablished by section 7 of this act shall be transferred to the motor vehicle fund." [1980 c 32 § 8.] Section 7 of this act is the amendment of RCW 46.12.360 by 1980 c 32.

Severability—Effective date—1975-'76 2nd ex.s. c 91: See notes following RCW 46.12.300.

46.12.380 Disclosure of names and addresses of individual vehicle owners. (1) Notwithstanding the provisions of chapter 42.17 RCW, the name or address of an individual vehicle owner shall not be released by the department, county auditor, or agency or firm authorized by the department except under the following circumstances:

(a) The requesting party is a business entity that requests the information for use in the course of business;

(b) The request is a written request that is signed by the person requesting disclosure that contains the full legal name and address of the requesting party, that specifies the purpose for which the information will be used; and

(c) The requesting party enters into a disclosure agreement with the department in which the party promises that the party will use the information only for the purpose stated in the request for the information; and that the party does not intend to use, or facilitate the use of, the information for the purpose of making any unsolicited business contact with a person named in the disclosed information. The term "unsolicited business contact" means a contact that is intended to result in, or promote, the sale of any goods or services to a person named in the disclosed information. The term does not apply to situations where the requesting party and such person have been involved in a business transaction prior to the date of the disclosure request and

where the request is made in connection with the transaction.

(2) The disclosing entity shall retain the request for disclosure for three years.

(3) Whenever the disclosing entity grants a request for information under this section by an attorney or private investigator, the disclosing entity shall provide notice to the vehicle owner, to whom the information applies, that the request has been granted. The notice also shall contain the name and address of the requesting party.

(4) Any person who is furnished vehicle owner information under this section shall be responsible for assuring that the information furnished is not used for a purpose contrary to the agreement between the person and the department.

(5) This section shall not apply to requests for information by governmental entities or requests that may be granted under any other provision of this title expressly authorizing the disclosure of the names or addresses of vehicle owners. [1990 c 232 § 2; 1987 c 299 § 1; 1984 c 241 § 2.]

Legislative finding and purpose—1990 c 232: "The legislature recognizes the extraordinary value of the vehicle title and registration records for law enforcement and commerce within the state. The legislature also recognizes that indiscriminate release of the vehicle owner information to be an infringement upon the rights of the owner and can subject owners to intrusions on their privacy. The purpose of *this act is to limit the release of vehicle owners' names and addresses while maintaining the availability of the vehicle records for the purposes of law enforcement and commerce." [1990 c 232 § 1.]

46.12.390 Disclosure violations, penalties. (1) The department may review the activities of a person who receives vehicle record information to ensure compliance with the limitations imposed on the use of the information. The department shall suspend or revoke for up to five years the privilege of obtaining vehicle record information of a person found to be in violation of chapter 42.17 RCW, this chapter, or a disclosure agreement executed with the department.

(2) In addition to the penalty in subsection (1) of this section:

(a) The unauthorized disclosure of information from a department vehicle record; or

(b) The use of a false representation to obtain information from the department's vehicle records; or

(c) The use of information obtained from the department vehicle records for a purpose other than what is stated in the request for information or in the disclosure agreement executed with the department; or

(d) The sale or other distribution of any vehicle owner name or address to another person not disclosed in the request or disclosure agreement

is a gross misdemeanor punishable by a fine not to exceed ten thousand dollars, or by imprisonment in a county jail not to exceed one year, or by both such fine and imprisonment for each violation. [1990 c 232 § 3.]

Legislative finding and purpose—1990 c 232: See note following RCW 46.12.380.

Chapter 46.16 VEHICLE LICENSES

Sections	
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46.16.311	Repealed.
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46.16.625	Repealed.
46.16.660	Repealed.
46.16.670	Boat trailers—Fee for freshwater aquatic weeds account.
46.16.710	Driving without valid license—Confiscation and marking of registration and license plates. (Effective until July 1, 1993.)

46.16.010 Licenses and plates required—Penalties—Exceptions. (1) It is unlawful for a person to operate any vehicle over and along a public highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display vehicle license number plates therefor as by this chapter provided. Failure to make initial registration before operation on the highways of this state is a misdemeanor, and any person convicted thereof shall be punished by a fine of no less than three hundred thirty dollars, no part of which may be suspended or deferred. Failure to renew an expired registration before operation on the highways of this state is a traffic infraction.

(2) The licensing of a motor vehicle in another state by a resident of this state, as defined in RCW 46.16.028,

with willful intent to evade the payment of any tax or license fee imposed in connection with registration, is a gross misdemeanor punishable as follows:

(a) For a first offense, up to one year in the county jail and a fine equal to twice the amount of delinquent taxes and fees, no part of which may be suspended or deferred;

(b) For a second or subsequent offense, up to one year in the county jail and a fine equal to three times the amount of delinquent taxes and fees, no part of which may be suspended or deferred.

(3) These provisions shall not apply to farm vehicle[s] as defined in RCW 46.04.181 if operated within a radius of fifteen miles of the farm where principally used or garaged, farm tractors and farm implements including trailers designed as cook or bunk houses used exclusively for animal herding temporarily operating or drawn upon the public highways, and trailers used exclusively to transport farm implements from one farm to another during the daylight hours or at night when such equipment has lights that comply with the law: PROVIDED FURTHER, That these provisions shall not apply to spray or fertilizer applicator rigs designed and used exclusively for spraying or fertilization in the conduct of agricultural operations and not primarily for the purpose of transportation, and nurse rigs or equipment auxiliary to the use of and designed or modified for the fueling, repairing or loading of spray and fertilizer applicator rigs and not used, designed or modified primarily for the purpose of transportation: PROVIDED FURTHER, That these provisions shall not apply to fork lifts operated during daylight hours on public highways adjacent to and within five hundred feet of the warehouses which they serve: PROVIDED FURTHER, That these provisions shall not apply to equipment defined as follows:

"Special highway construction equipment" is any vehicle which is designed and used primarily for grading of highways, paving of highways, earth moving, and other construction work on highways and which is not designed or used primarily for the transportation of persons or property on a public highway and which is only incidentally operated or moved over the highway. It includes, but is not limited to, road construction and maintenance machinery so designed and used such as portable air compressors, air drills, asphalt spreaders, bituminous mixers, bucket loaders, track laying tractors, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers, earth moving scrapers and carryalls, lighting plants, welders, pumps, power shovels and draglines, self-propelled and tractor-drawn earth moving equipment and machinery, including dump trucks and tractor-dump trailer combinations which either (1) are in excess of the legal width or (2) which, because of their length, height or unladen weight, may not be moved on a public highway without the permit specified in RCW 46.44.090 and which are not operated laden except within the boundaries of the project limits as defined by the contract, and other similar types of construction equipment, or (3) which are driven or moved upon a public highway only for the purpose of crossing such highway from one property to

another, provided such movement does not exceed five hundred feet and the vehicle is equipped with wheels or pads which will not damage the roadway surface.

Exclusions:

"Special highway construction equipment" does not include any of the following:

Dump trucks originally designed to comply with the legal size and weight provisions of this code notwithstanding any subsequent modification which would require a permit, as specified in RCW 46.44.090, to operate such vehicles on a public highway, including trailers, truck-mounted transit mixers, cranes and shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(4) The following vehicles, whether operated solo or in combination, are exempt from license registration and displaying license plates as required by this chapter:

(a) A converter gear used to convert a semitrailer into a trailer or a two-axle truck or tractor into a three or more axle truck or tractor or used in any other manner to increase the number of axles of a vehicle. Converter gear includes an auxiliary axle, booster axle, dolly, and jeep axle.

(b) A tow dolly that is used for towing a motor vehicle behind another motor vehicle. The front or rear wheels of the towed vehicle are secured to and rest on the tow dolly that is attached to the towing vehicle by a tow bar. [1991 c 163 § 1; 1989 c 192 § 2; 1986 c 186 § 1; 1977 ex.s. c 148 § 1; 1973 1st ex.s. c 17 § 2; 1972 ex.s. c 5 § 2; 1969 c 27 § 3; 1967 c 202 § 2; 1963 ex.s. c 3 § 51; 1961 ex.s. c 21 § 32; 1961 c 12 § 46.16.010. Prior: 1955 c 265 § 1; 1947 c 33 § 1; 1937 c 188 § 15; Rem. Supp. 1947 § 6312-15; 1929 c 99 § 5; RRS § 6324.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Legislative intent—1989 c 192: "The legislature recognizes that there are residents of this state who intentionally register motor vehicles in other states to evade payment of taxes and fees required by the laws of this state. This results in a substantial loss of revenue to the state. It is the intent of the legislature to impose a stronger criminal penalty upon those residents who defraud the state, thereby enhancing compliance with the registration laws of this state and further enhancing enforcement and collection efforts.

In order to encourage voluntary compliance with the registration laws of this state, administrative penalties associated with failing to register a motor vehicle are waived until September 1, 1989. It is not the intent of the legislature to waive traffic infraction or criminal traffic violations imposed prior to July 23, 1989." [1989 c 192 § 1.]

Effective date—1989 c 192: "Section 2 of this act shall take effect September 1, 1989." [1989 c 192 § 3.]

46.16.015 Emission control inspections required—
Exceptions. (Effective until January 1, 1993.) (1) Neither the department of licensing nor its agents may issue or renew a motor vehicle license for any vehicle registered in an emission contributing area, as that area is established under chapter 70.120 RCW, for any year in which the vehicle is required to be tested under chapter 70.120 RCW, unless the application for issuance or renewal is: (a) Accompanied by a valid certificate of compliance or a valid certificate of acceptance issued pursuant to chapter 70.120 RCW; or (b) exempted from

this requirement pursuant to subsection (2) of this section. The certificates must have a date of validation which is within ninety days of the date of application for the vehicle license or license renewal. Certificates for fleet vehicles may have a date of validation which is within twelve months of the assigned license renewal date.

(2) Subsection (1) of this section does not apply to the following vehicles:

(a) New motor vehicles whose equitable or legal title has never been transferred to a person who in good faith purchases the vehicle for purposes other than resale;

(b) Motor vehicles with a model year of 1967 or earlier;

(c) Motor vehicles that use propulsion units powered exclusively by electricity;

(d) Motor vehicles fueled exclusively by propane, compressed natural gas, or liquid petroleum gas, unless it is determined that federal sanctions will be imposed as a result of this exemption;

(e) Motorcycles as defined in RCW 46.04.330 and motor-driven cycles as defined in RCW 46.04.332;

(f) Motor vehicles powered by diesel engines;

(g) Farm vehicles as defined in RCW 46.04.181;

(h) Used vehicles which are offered for sale by a motor vehicle dealer licensed under chapter 46.70 RCW; or

(i) Motor vehicles exempted by the director of the department of ecology.

The provisions of subparagraph (a) of this subsection may not be construed as exempting from the provisions of subsection (1) of this section applications for the renewal of licenses for motor vehicles that are or have been leased.

(3) The department of licensing shall mail to each owner of a vehicle registered within an emission contributing area a notice regarding the boundaries of the area and restrictions established under this section that apply to vehicles registered in such areas. The information for the notice shall be supplied to the department of licensing by the department of ecology. The department of licensing shall send to all registered motor vehicle owners who reside within the emissions area notice that they must have an emission test to renew their registration. [1990 c 42 § 318; 1989 c 240 § 1; 1985 c 7 § 111. Prior: 1983 c 238 § 1; 1983 c 237 § 3; 1980 c 176 § 1; 1979 ex.s. c 163 § 11.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—1989 c 240: See RCW 70.120.902.

Severability—1983 c 238: "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." [1983 c 238 § 3.]

Legislative finding—1983 c 237: See note following RCW 46.37.467.

Effective date—1979 ex.s. c 163: "Section 11 of this act [RCW 46.16.015] shall take effect on January 1, 1982. The director of the department of licensing and the director of the department of ecology are authorized to take immediately such steps as are necessary to ensure that section 11 of this act is implemented on its effective date." [1979 ex.s. c 163 § 16.]

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

46.16.015 Emission control inspections required—Exceptions—Educational information. (Effective January 1, 1993.) (1) Neither the department of licensing nor its agents may issue or renew a motor vehicle license for any vehicle or change the registered owner of a licensed vehicle, for any vehicle that is required to be inspected under chapter 70.120 RCW, unless the application for issuance or renewal is: (a) Accompanied by a valid certificate of compliance or a valid certificate of acceptance issued pursuant to chapter 70.120 RCW; or (b) exempted from this requirement pursuant to subsection (2) of this section. The certificates must have a date of validation which is within six months of the date of application for the vehicle license or license renewal. Certificates for fleet or owner tested diesel vehicles may have a date of validation which is within twelve months of the assigned license renewal date.

(2) Subsection (1) of this section does not apply to the following vehicles:

(a) New motor vehicles whose equitable or legal title has never been transferred to a person who in good faith purchases the vehicle for purposes other than resale;

(b) Motor vehicles with a model year of 1967 or earlier;

(c) Motor vehicles that use propulsion units powered exclusively by electricity;

(d) Motor vehicles fueled by propane, compressed natural gas, or liquid petroleum gas, unless it is determined that federal sanctions will be imposed as a result of this exemption;

(e) Motorcycles as defined in RCW 46.04.330 and motor-driven cycles as defined in RCW 46.04.332;

(f) Farm vehicles as defined in RCW 46.04.181;

(g) Used vehicles which are offered for sale by a motor vehicle dealer licensed under chapter 46.70 RCW; or

(h) Motor vehicles exempted by the director of the department of ecology.

The provisions of subparagraph (a) of this subsection may not be construed as exempting from the provisions of subsection (1) of this section applications for the renewal of licenses for motor vehicles that are or have been leased.

(3) The department of ecology shall provide information to motor vehicle owners regarding the boundaries of emission contributing areas and restrictions established under this section that apply to vehicles registered in such areas. In addition the department of ecology shall provide information to motor vehicle owners on the relationship between motor vehicles and air pollution and steps motor vehicle owners should take to reduce motor vehicle related air pollution. The department of licensing shall send to all registered motor vehicle owners affected by the emission testing program notice that they must have an emission test to renew their registration. [1991 c 199 § 209; 1990 c 42 § 318; 1989 c 240 § 1; 1985 c 7 § 111. Prior: 1983 c 238 § 1; 1983 c 237 § 3; 1980 c 176 § 1; 1979 ex.s. c 163 § 11.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—1989 c 240: See RCW 70.120.902.

Severability—1983 c 238: "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." [1983 c 238 § 3.]

Legislative finding—1983 c 237: See note following RCW 46.37.467.

Effective date—1979 ex.s. c 163: "Section 11 of this act [RCW 46.16.015] shall take effect on January 1, 1982. The director of the department of licensing and the director of the department of ecology are authorized to take immediately such steps as are necessary to ensure that section 11 of this act is implemented on its effective date." [1979 ex.s. c 163 § 16.]

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

46.16.030 Nonresident exemption—Reciprocity.

Except as is herein provided for foreign businesses, the provisions relative to the licensing of vehicles and display of vehicle license number plates and license registration certificates shall not apply to any vehicles owned by nonresidents of this state if the owner thereof has complied with the law requiring the licensing of vehicles in the names of the owners thereof in force in the state, foreign country, territory or federal district of his or her residence; and the vehicle license number plate showing the initial or abbreviation of the name of such state, foreign country, territory or federal district, is displayed on such vehicle substantially as is provided therefor in this state. The provisions of this section shall be operative as to a vehicle owned by a nonresident of this state only to the extent that under the laws of the state, foreign country, territory or federal district of his or her residence, like exemptions and privileges are granted to vehicles duly licensed under the laws of and owned by residents of this state. If under the laws of such state, foreign country, territory or federal district, vehicles owned by residents of this state, operating upon the highways of such state, foreign country, territory or federal district, are required to pay the license fee and carry the vehicle license number plates of such state, foreign country, territory or federal district, the vehicles owned by residents of such state, foreign country, territory or federal district, and operating upon the highways of this state, shall comply with the provisions of this state relating to the licensing of vehicles. Foreign businesses owning, maintaining, or operating places of business in this state and using vehicles in connection with such places of business, shall comply with the provisions relating to the licensing of vehicles insofar as vehicles used in connection with such places of business are concerned. Under provisions of the international registration plan, the nonmotor vehicles of member and nonmember jurisdictions which are properly based and licensed in such jurisdictions are granted reciprocity in this state as provided in RCW 46.87.070(2). The director is empowered to make and enforce rules and regulations for the licensing of nonresident vehicles upon a reciprocal basis and with respect to any character or class of operation.

[1991 c 163 § 2; 1990 c 42 § 110; 1967 c 32 § 15; 1961 c 12 § 46.16.030. Prior: 1937 c 188 § 23; RRS § 6312-23; 1931 c 120 § 1; 1929 c 99 § 4; 1921 c 96 § 11; 1919 c 59 § 6; 1917 c 155 § 7; 1915 c 142 § 11; RRS § 6322.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

46.16.035 Exemptions—Private school buses. Any bus or vehicle owned and operated by a private school or schools meeting the requirements of RCW 28A.195.010 and used by that school or schools primarily to transport children to and from school or to transport children in connection with school activities shall be exempt from the payment of license fees for the licensing thereof as in this chapter provided. A license issued by the department for such bus or vehicle shall be considered an exempt license under RCW 82.44.010. [1990 c 33 § 584; 1980 c 88 § 1.]

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

46.16.045 Temporary permits—Authority—

Fees. (1) The department in its discretion may grant a temporary permit to operate a vehicle for which application for registration has been made, where such application is accompanied by the proper fee pending action upon said application by the department.

(2) The department may authorize vehicle dealers properly licensed pursuant to chapter 46.70 RCW to issue temporary permits to operate vehicles under such rules and regulations as the department deems appropriate.

(3) The fee for each temporary permit application distributed to an authorized vehicle dealer shall be five dollars, which shall be credited to the payment of registration fees at the time application for registration is made.

(4) The payment of the registration fees to an authorized dealer is considered payment to the state of Washington. [1990 c 198 § 1; 1973 1st ex.s. c 132 § 23; 1961 c 12 § 46.16.045. Prior: 1959 c 66 § 1.]

Severability—1973 1st ex.s. c 132: See RCW 46.16.900, 46.70.920.

46.16.070 License fee on trucks, buses, and for hire vehicles based on gross weight.

(1) In lieu of all other vehicle licensing fees, unless specifically exempt, and in addition to the excise tax prescribed in chapter 82.44 RCW and the mileage fees prescribed for buses and stages in RCW 46.16.125, there shall be paid and collected annually for each motor truck, truck tractor, road tractor, tractor, bus, auto stage, or for hire vehicle with seating capacity of more than six, based upon the declared combined gross weight or declared gross weight thereof pursuant to the provisions of chapter 46.44 RCW, the following licensing fees by such gross weight:

4,000 lbs.	\$ 37.00
6,000 lbs.	\$ 44.00
8,000 lbs.	\$ 55.00

10,000 lbs.	\$ 62.00
12,000 lbs.	\$ 72.00
14,000 lbs.	\$ 82.00
16,000 lbs.	\$ 92.00
18,000 lbs.	\$ 137.00
20,000 lbs.	\$ 152.00
22,000 lbs.	\$ 164.00
24,000 lbs.	\$ 177.00
26,000 lbs.	\$ 187.00
28,000 lbs.	\$ 220.00
30,000 lbs.	\$ 253.00
32,000 lbs.	\$ 304.00
34,000 lbs.	\$ 323.00
36,000 lbs.	\$ 350.00
38,000 lbs.	\$ 384.00
40,000 lbs.	\$ 439.00
42,000 lbs.	\$ 456.00
44,000 lbs.	\$ 466.00
46,000 lbs.	\$ 501.00
48,000 lbs.	\$ 522.00
50,000 lbs.	\$ 566.00
52,000 lbs.	\$ 595.00
54,000 lbs.	\$ 642.00
56,000 lbs.	\$ 677.00
58,000 lbs.	\$ 704.00
60,000 lbs.	\$ 750.00
62,000 lbs.	\$ 804.00
64,000 lbs.	\$ 822.00
66,000 lbs.	\$ 915.00
68,000 lbs.	\$ 954.00
70,000 lbs.	\$ 1,027.00
72,000 lbs.	\$ 1,098.00
74,000 lbs.	\$ 1,193.00
76,000 lbs.	\$ 1,289.00
78,000 lbs.	\$ 1,407.00
80,000 lbs.	\$ 1,518.00

Every motor truck, truck tractor, and tractor exceeding 6,000 pounds empty scale weight registered under chapter 46.16, 46.87, or 46.88 RCW shall be licensed for not less than one hundred fifty percent of its empty weight unless the amount would be in excess of the legal limits prescribed for such a vehicle in RCW 46.44.041 or 46.44.042, in which event the vehicle shall be licensed for the maximum weight authorized for such a vehicle.

The following provisions apply when increasing gross or combined gross weight for a vehicle licensed under this section:

(a) The new license fee will be one-twelfth of the fee listed above for the new gross weight, multiplied by the number of months remaining in the period for which licensing fees have been paid, including the month in which the new gross weight is effective.

(b) Upon surrender of the current certificate of registration or cab card, the new licensing fees due shall be reduced by the amount of the licensing fees previously paid for the same period for which new fees are being charged.

(2) The proceeds from the fees collected under subsection (1) of this section shall be distributed in accordance with RCW 46.68.035. [1990 c 42 § 105; 1989 c 156 § 1. Prior: 1987 1st ex.s. c 9 § 4; 1987 c 244 § 3;

1986 c 18 § 4; 1985 c 380 § 15; 1975-'76 2nd ex.s. c 64 § 1; 1969 ex.s. c 281 § 54; 1967 ex.s. c 118 § 1; 1967 ex.s. c 83 § 56; 1961 ex.s. c 7 § 11; 1961 c 12 § 46.16-.070; prior: 1957 c 273 § 1; 1955 c 363 § 2; prior: 1951 c 269 § 9; 1950 ex.s. c 15 § 1, part; 1939 c 182 § 3, part; 1937 c 188 § 17, part; 1931 c 140 § 1, part; 1921 c 96 § 15, part; 1919 c 46 § 1, part; 1917 c 155 § 10, part; 1915 c 142 § 15, part; Rem. Supp. 1949 § 6312-17, part; RRS § 6326, part.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Application—1989 c 156: "This act first applies to the renewal of vehicle registrations that have a December 1990 or later expiration date and all initial vehicle registrations that are effective on or after January 1, 1990." [1989 c 156 § 5.]

Severability—Effective date—1987 1st ex.s. c 9: See notes following RCW 46.29.050.

Effective date—1986 c 18; 1985 c 380: See RCW 46.87.901.

Severability—1985 c 380: See RCW 46.87.900.

Effective dates—1975-'76 2nd ex.s. c 64: "Sections 1, 2, and 5 through 24 of this 1976 amendatory act shall take effect on July 1, 1976, and sections 3 and 4 of this 1976 amendatory act shall take effect on January 1, 1977. All current and outstanding valid licenses and permits held by licensees on July 1, 1976, shall remain valid until their expiration dates, but renewals and original applications made after July 1, 1976, shall be governed by the law in effect at the time such renewal or application is made." [1975-'76 2nd ex.s. c 64 § 25.]

Severability—1975-'76 2nd ex.s. c 64: "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 64 § 26.]

Effective date—1969 ex.s. c 281: See note following RCW 46.88.010.

Severability—Effective dates—1967 ex.s. c 83: See RCW 47-26.900 and 47.26.910.

46.16.083 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

46.16.085 Commercial trailers, pole trailers—Fee in lieu. In lieu of all other licensing fees, an annual license fee of thirty-six dollars shall be collected in addition to the excise tax prescribed in chapter 82.44 RCW for: (1) Each trailer and semitrailer not subject to the license fee under RCW 46.16.065 or the capacity fees under RCW 46.16.080; (2) every pole trailer. The proceeds from this fee shall be distributed in accordance with RCW 46.68.035. This section does not pertain to travel trailers or personal use trailers that are not used for commercial purposes or owned by commercial enterprises. [1991 c 163 § 3; 1989 c 156 § 2; 1987 c 244 § 4; 1986 c 18 § 8; 1985 c 380 § 16.]

Application—1989 c 156: See note following RCW 46.16.070.

Effective date—1986 c 18; 1985 c 380: See RCW 46.87.901.

Severability—1985 c 380: See RCW 46.87.900.

46.16.216 Payment of parking fines required for renewal. (1) To renew a vehicle license, an applicant shall satisfy all listed standing, stopping, and parking violations for the vehicle incurred while the vehicle was registered in the applicant's name and forwarded to the department pursuant to RCW 46.20.270(3). For the

purposes of this section, "listed" standing, stopping, and parking violations include only those violations for which notice has been received from local agencies by the department one hundred twenty days or more before the date the vehicle license expires and that are placed on the records of the department. Notice of such violations received by the department later than one hundred twenty days before that date that are not satisfied shall be considered by the department in connection with any applications for license renewal in any subsequent license year. The renewal application may be processed by the department or its agents only if the applicant:

(a) Presents a preprinted renewal application showing no listed standing, stopping, and parking violations, or in the absence of such presentation, the agent verifies the information that would be contained on the preprinted renewal application; or

(b) If listed standing, stopping, and parking violations exist, presents proof of payment and pays a fifteen dollar surcharge.

(2) The surcharge shall be allocated as follows:

(a) Ten dollars shall be deposited in the motor vehicle fund to be used exclusively for the administrative costs of the department of licensing; and

(b) Five dollars shall be retained by the agent handling the renewal application to be used by the agent for the administration of this section.

(3) If there is a change in the registered owner of the vehicle, the department shall forward the information regarding the change to the local charging jurisdiction and release any hold on the renewal of the vehicle license resulting from parking violations incurred while the certificate of license registration was in a previous registered owner's name.

(4) The department shall send to all registered owners of vehicles who have been reported to have outstanding listed parking violations, at the time of renewal, a statement setting out the dates and jurisdictions in which the violations occurred as well as the amounts of unpaid fines and penalties relating to them and the surcharge to be collected. [1990 2nd ex.s. c 1 § 401; 1984 c 224 § 1.]

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Severability—1984 c 224: "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." [1984 c 224 § 5.]

Effective date—1984 c 224: "This act shall take effect on July 1, 1984." [1984 c 224 § 6.]

46.16.220 Time of renewal of licenses—Duration.

Vehicle licenses and vehicle license number plates may be renewed for the subsequent registration year on and after the forty-fifth day prior to the end of the current registration year and must be used and displayed from the date of issue or from the day of the expiration of the preceding registration year, whichever date is later. [1991 c 339 § 20; 1975 1st ex.s. c 118 § 9; 1969 ex.s. c 170 § 9; 1961 c 12 § 46.16.220. Prior: 1957 c 261 § 8; 1955 c 89 § 1; 1953 c 252 § 4; 1947 c 164 § 12; 1937 c 188 § 35; Rem. Supp. 1947 § 6312-35; 1921 c 96 § 7,

part; RRS § 6318, part; 1921 c 6 § 1, part; 1916 c 142 § 7, part.]

Effective date—Severability—1975 1st ex.s. c 118: See notes following RCW 46.16.006.

46.16.270 Replacement of plates—Fee. Replacement plates issued after January 1, 1987, will be centennial plates as described in RCW 46.16.650. The total replacement plate fee including the one dollar per plate centennial plate fee shall be deposited in the motor vehicle fund.

Upon the loss, defacement, or destruction of one or both of the vehicle license number plates issued for any vehicle where more than one plate was originally issued or where one or both have become so illegible or in such a condition as to be difficult to distinguish, or upon the owner's option, the owner of the vehicle shall make application for new vehicle license number plates upon a form furnished by the director. The application shall be filed with the director or the director's authorized agent, accompanied by the certificate of license registration of the vehicle and a fee in the amount of three dollars per plate, whereupon the director, or the director's authorized agent, shall issue new vehicle license number plates to the applicant. It shall be accompanied by a fee of two dollars for a new motorcycle license number plate. In the event the director has issued license period tabs or a windshield emblem instead of vehicle license number plates, and upon the loss, defacement, or destruction of the tabs or windshield emblem, application shall be made on a form provided by the director and in the same manner as above described, and shall be accompanied by a fee of one dollar for each pair of tabs or for each windshield emblem, whereupon the director shall issue to the applicant a duplicate pair of tabs, year tabs, and when necessary month tabs or a windshield emblem to replace those lost, defaced, or destroyed. For vehicles owned, rented, or leased by the state of Washington or by any county, city, town, school district, or other political subdivision of the state of Washington or United States government, or owned or leased by the governing body of an Indian tribe as defined in RCW 46.16.020, a fee shall be charged for replacement of a vehicle license number plate only to the extent required by the provisions of RCW 46.16.020, 46.16.061, 46.16.237, and 46.01.140. For vehicles owned, rented, or leased by foreign countries or international bodies to which the United States government is a signatory by treaty, the payment of any fee for the replacement of a vehicle license number plate shall not be required. [1990 c 250 § 32; 1987 c 178 § 2. Prior: 1986 c 280 § 4; 1986 c 30 § 3; 1975 1st ex.s. c 169 § 7; 1965 ex.s. c 78 § 1; 1961 c 12 § 46.16.270; prior: 1951 c 269 § 6; 1947 c 164 § 13; 1937 c 188 § 37; Rem. Supp. 1947 § 6312-37; 1929 c 99 § 6; 1921 c 96 § 14; 1919 c 59 § 8; 1915 c 142 § 14; RRS § 6325.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.16.301 Special license plates—Authority of department. (1) The department may create, design, and issue special license plates, upon terms and conditions as may be established by the department, that may be used

in lieu of regular or personalized license plates upon vehicles. The special plates may denote the age or type of vehicle or may denote special activities or interests, status, or contribution or sacrifice for the United States, the state of Washington, or the citizens of the state of Washington, of a registered owner of that vehicle.

(2) The department has the sole discretion to determine whether or not to create, design, or issue any series of special license plates and whether any activity, status, contribution, or sacrifice merits the issuance of a series of special license plates. In making this determination, the department shall consider whether or not an activity or interest proposed contributes or has contributed significantly to the public health, safety, or welfare of the citizens of the United States or of this state or to their significant benefit, or whether the activity, interest, contribution, or sacrifice is recognized by the United States, this state, or other states, in other settings or contexts. The department may also consider the potential number of persons who may be eligible for the plates and the cost and efficiency of producing limited numbers of the plates. The design of a special license plate shall conform to all requirements for plates for the type of vehicle for which it is issued, as provided elsewhere in this chapter. [1990 c 250 § 1.]

Effective dates—1990 c 250 §§ 1-13: "Sections 1 through 9, and 11 through 13 of this act shall take effect on January 1, 1991. Section 10 of this act shall take effect on July 1, 1990." [1990 c 250 § 93.]

Severability—1990 c 250: "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." [1990 c 250 § 92.]

46.16.305 Special license plates—Continuance of earlier issues—Conditions for current issues. The department shall continue to issue, under RCW 46.16.301 and the department's rules implementing RCW 46.16.301 through 46.16.332, the categories of special plates issued by the department under the sections repealed under section *13 (1) through (7), chapter 250, Laws of 1990. Special license plates issued under those repealed sections before January 1, 1991, are valid to the extent and under the conditions provided in those repealed sections. The following conditions, limitations, or requirements apply to certain special license plates issued after January 1, 1991:

(1) A horseless carriage plate and a plate or plates issued for collectors' vehicles more than thirty years old, upon payment of the initial fees required by law and the additional special license plate fee established by the department, are valid for the life of the vehicle for which application is approved by the department. When a single plate is issued, it shall be displayed on the rear of the vehicle.

(2) The department may issue special license plates denoting amateur radio operator status only to persons having a valid official radio operator license issued for a term of five years by the federal communications commission.

(3) The department shall issue one set of special license plates to each resident of this state who has been awarded the Congressional Medal of Honor for use on a

passenger vehicle registered to that person. The department shall issue the plate without the payment of any fees.

(4) The department may issue for use on only one motor vehicle owned by the qualified applicant special license plates denoting that the recipient of the plate is a survivor of the attack on Pearl Harbor on December 7, 1941, to persons meeting all of the following criteria:

(a) Is a resident of this state;

(b) Was a member of the United States Armed Forces on December 7, 1941;

(c) Was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. Hawaii time at Pearl Harbor, the island of Oahu, or offshore at a distance not to exceed three miles;

(d) Received an honorable discharge from the United States Armed Forces; and

(e) Is certified by a Washington state chapter of the Pearl Harbor survivors association as satisfying the qualifications in (c) of this subsection.

The department may issue such plates to the surviving spouse of any deceased Pearl Harbor survivor who met the requirements of this subsection. If the surviving spouse remarries, he or she shall return the special plates to the department within fifteen days and apply for regular plates. The surviving spouse must be a resident of this state.

The department shall issue these plates upon payment by the applicant of all other license fees, but the department may not set or charge an additional fee for these special license plates under RCW 46.16.313.

(5) The department shall replace, free of charge, special license plates issued under subsections (3) and (4) of this section if they are lost, stolen, damaged, defaced, or destroyed. Such plates shall remain with the persons upon transfer or other disposition of the vehicle for which they were initially issued, and may be used on another vehicle registered to the recipient in accordance with the provisions of RCW 46.16.316(1). [1990 c 250 § 2.]

***Reviser's note:** Section 12, not section 13, of 1990 c 250 repealed earlier statutes dealing with special license plates.

Effective dates—1990 c 250 §§ 1-13: See note following RCW 46.16.301.

Severability—1990 c 250: See note following RCW 46.16.301.

46.16.309 Special license plates—Application for. Persons applying to the department for special license plates shall apply on forms obtained from the department and in accordance with RCW 46.16.040. The applicant shall provide all information as is required by the department in order to determine the applicant's eligibility for such special license plates and for administration of RCW 46.16.301 through 46.16.332. [1990 c 250 § 3.]

Effective dates—1990 c 250 §§ 1-13: See note following RCW 46.16.301.

Severability—1990 c 250: See note following RCW 46.16.301.

46.16.310 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

46.16.311 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

46.16.313 Special license plates—Fees. The department may establish a fee for the issuance of each type of special license plate or plates in an amount calculated to offset the cost of production of the special license plate or plates and the administration of this program. The fee shall not exceed thirty-five dollars and is in addition to all other fees required to register and license the vehicle for which the plates have been requested. All such additional special license plate fees collected by the department shall be deposited in the state treasury and credited to the motor vehicle fund. [1990 c 250 § 4.]

Effective dates—1990 c 250 §§ 1-13: See note following RCW 46.16.301.

Severability—1990 c 250: See note following RCW 46.16.301.

46.16.315 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

46.16.316 Special license plates—Transfer of vehicle—Replacement plates. Except as provided in RCW 46.16.305:

(1) When a person who has been issued a special license plate or plates under RCW 46.16.301 sells, trades, or otherwise transfers or releases ownership of the vehicle upon which the special license plate or plates have been displayed, he or she shall immediately report the transfer of such plate or plates to an acquired vehicle or vehicle eligible for such plates pursuant to departmental rule, or he or she shall surrender such plates to the department immediately if such surrender is required by departmental rule. If a person applies for a transfer of the plate or plates to another eligible vehicle, a transfer fee of five dollars shall be charged in addition to all other applicable fees. Such transfer fees shall be deposited in the motor vehicle fund. Failure to surrender the plates when required is a traffic infraction.

(2) If the special license plate or plates issued by the department become lost, defaced, damaged, or destroyed, application for a replacement special license plate or plates shall be made and fees paid as provided by law for the replacement of regular license plates. [1990 c 250 § 5.]

Effective dates—1990 c 250 §§ 1-13: See note following RCW 46.16.301.

Severability—1990 c 250: See note following RCW 46.16.301.

46.16.319 Veterans and military personnel—Remembrance emblems. (1) The department shall issue upon payment of a fee and proof from an honorably discharged veteran, veterans with honorable military service, or military personnel on active duty in the armed

service, a remembrance emblem depicting a tribute or message and the American flag.

(2) Veterans and military personnel who served in our nation's wars and conflicts can, upon request and payment of a fee and proof of service, receive a remembrance emblem depicting the campaign ribbon they were awarded. The following campaign ribbon remembrance emblems will be available: World War I victory medal; Asiatic-Pacific campaign medal, WWII; European-African-Middle East campaign medal, WWII; American campaign medal, WWII; Korean service medal; Vietnam service medal; Armed Forces Expeditionary, after 1958. The director may adopt additional campaign ribbon remembrance emblems by rule.

(3) The remembrance emblem will be displayed upon vehicle license plates in the manner prescribed by the department.

(4) A veteran or military personnel requesting a remembrance emblem from the department shall provide a copy of his or her discharge papers (DD-214) or military orders indicating their military status and campaign ribbon awarded along with payment of the fee. A veteran or military personnel requesting a remembrance emblem must be a legal or registered owner of the vehicle on which remembrance emblems are to be displayed. [1991 c 339 § 11; 1990 c 250 § 6.]

Effective dates—1990 c 250 §§ 1-13: See note following RCW 46.16.301.

Severability—1990 c 250: See note following RCW 46.16.301.

46.16.320 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

46.16.323 Institutions of higher education—Special plate emblems. Any institution of higher education as defined in RCW 28B.10.016 may petition the department to create, design, and issue to that institution a vehicle license plate emblem series that identifies that institution or one of its purposes, programs, projects, or causes. The vehicle license plate emblem issued by the department may display a mascot, slogan, message, or symbol that can be displayed on a vehicle license plate or plates in the manner prescribed by the department. The department has sole discretion in approving or disapproving institutions for participation in the vehicle license plate emblem program. The department also has the sole discretion to determine the significance of the purpose, program, project, or cause and if it merits recognition by issuance of a vehicle license plate emblem.

Application to the department is the exclusive method for an institution to request issuance of a special vehicle license plate emblem series or to obtain such emblems for distribution by approved institutions. All applicants shall apply to the department on a form obtained from the department.

Any approved institution may collect additional fees from any person as a condition for receiving an emblem, to be used for the purposes of the approved institution. [1990 c 250 § 7.]

Effective dates—1990 c 250 §§ 1-13: See note following RCW 46.16.301.

Severability—1990 c 250: See note following RCW 46.16.301.

46.16.327 License plate emblems—Material, display requirements. Vehicle license plate emblems and veteran remembrance emblems shall use fully reflectorized materials designed to provide visibility at night. Emblems shall be designed to be affixed to a vehicle license number plate by pressure-sensitive adhesive so as not to obscure the plate identification numbers or letters.

Emblems will be issued for display on the front and rear license number plates. Single emblems will be issued for vehicles authorized to display one license number plate. [1990 c 250 § 8.]

Effective dates—1990 c 250 §§ 1-13: See note following RCW 46.16.301.

Severability—1990 c 250: See note following RCW 46.16.301.

46.16.330 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

46.16.332 License plate emblems—Fees. (1) The director may adopt fees to be charged by the department for emblems issued by the department under RCW 46.16.319 and 46.16.323.

(2) The fee for each remembrance emblem issued under RCW 46.16.319 shall be in an amount sufficient to offset the costs of production of remembrance emblems and the administration of that program by the department plus an amount for use by the department of veterans affairs, not to exceed a total fee of twenty-five dollars per emblem. The fee for each special vehicle license plate emblem issued under RCW 46.16.323 shall be an amount sufficient to offset the cost of production of the emblems and of administering the special vehicle license plate emblem program.

(3) The veterans' emblem account is created in the custody of the state treasurer. All receipts by the department from the issuance of remembrance emblems under RCW 46.16.319 shall be deposited into this fund. Expenditures from the fund may be used only for the costs of production of remembrance emblems and administration of the program by the department of licensing, with the balance used only by the department of veterans affairs for projects that pay tribute to those living veterans and to those who have died defending freedom in our nation's wars and conflicts and for the upkeep and operations of existing memorials, as well as for planning, acquiring land for, and constructing future memorials. Only the director of licensing, the director of veterans affairs, or their designees may authorize expenditures from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(4) The special vehicle license plate emblem account is established in the state treasury. Fees collected by the department for emblems issued under RCW 46.16.323 shall be deposited into the special vehicle license plate emblem account to be used only to offset the costs of

administering the special vehicle license plate emblem program. [1990 c 250 § 9.]

Effective dates—1990 c 250 §§ 1-13: See note following RCW 46.16.301.

Severability—1990 c 250: See note following RCW 46.16.301.

46.16.335 Special license plates and emblems—Rules. The director shall adopt rules to implement RCW 46.16.301 through 46.16.332, including setting of fees. [1990 c 250 § 10.]

Effective dates—1990 c 250 §§ 1-13: See note following RCW 46.16.301.

Severability—1990 c 250: See note following RCW 46.16.301.

46.16.350 Amateur radio operator plates—Expiration or revocation of radio license—Penalty. Any radio amateur operator who holds a special call letter license plate as issued under RCW 46.16.301 through 46.16.316, and who has allowed his or her federal communications commission license to expire, or has had it revoked, must notify the director in writing within thirty days and surrender his or her call letter license plate. Failure to do so is a traffic infraction. [1990 c 250 § 11; 1979 ex.s. c 136 § 49; 1967 c 32 § 24; 1961 c 12 § 46-.16.350. Prior: 1957 c 145 § 4.]

Effective dates—1990 c 250 §§ 1-13: See note following RCW 46.16.301.

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.16.381 Special parking privileges for disabled persons—Penalties for unauthorized use or parking. (1) The director shall grant special parking privileges to any person who has a disability that limits or impairs the ability to walk and meets one of the following criteria, as determined by a licensed physician:

(a) Cannot walk two hundred feet without stopping to rest;

(b) Is severely limited in ability to walk due to arthritic, neurological, or orthopedic condition;

(c) Is so severely disabled, that the person cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;

(d) Uses portable oxygen;

(e) Is restricted by lung disease to such an extent that forced expiratory respiratory volume, when measured by spirometry is less than one liter per second or the arterial oxygen tension is less than sixty mm/hg on room air at rest;

(f) Impairment by cardiovascular disease or cardiac condition to the extent that the person's functional limitations are classified as class III or IV under standards accepted by the American Heart Association; or

(g) Has a disability resulting from an acute sensitivity to automobile emissions which limits or impairs the ability to walk. The personal physician of the applicant shall document that the disability is comparable in severity to the others listed in this subsection.

(2) Persons who qualify for special parking privileges are entitled to receive from the department of licensing a removable windshield placard bearing the international symbol of access. The department shall design the placard to be displayed when the vehicle is parked by suspending it from the rearview mirror, or in the absence of a rearview mirror the card may be displayed on the dashboard of any vehicle used to transport the disabled person. Instead of regular motor vehicle license plates, disabled persons are entitled to receive special license plates bearing the international symbol of access for one vehicle registered in the disabled person's name. Disabled persons who are not issued the special license plates are entitled to receive a second special placard. Persons who have been issued the parking privileges and who are using a vehicle or are riding in a vehicle displaying the special license plates or placard may park in places reserved for mobility disabled persons. The director shall adopt rules providing for the issuance of special placards and license plates to public transportation authorities, nursing homes licensed under chapter 18.51 RCW, senior citizen centers, and private nonprofit agencies as defined in chapter 24.03 RCW that regularly transport disabled persons who have been determined eligible for special parking privileges provided under this section. The director may issue special license plates for a vehicle registered in the name of the public transportation authority, nursing home, senior citizen center, or private nonprofit agency if the vehicle is primarily used to transport persons with disabilities described in this section. Public transportation authorities, nursing homes, senior citizen centers, and private nonprofit agencies are responsible for insuring that the special placards and license plates are not used improperly and are responsible for all fines and penalties for improper use.

(3) Whenever the disabled person transfers or assigns his or her interest in the vehicle, the special license plates shall be removed from the motor vehicle. If another vehicle is acquired by the disabled person and the vehicle owner qualifies for a special plate, the plate shall be attached to the vehicle, and the director shall be immediately notified of the transfer of the plate. If another vehicle is not acquired by the disabled person, the removed plate shall be immediately surrendered to the director.

(4) The special license plate shall be renewed in the same manner and at the time required for the renewal of regular motor vehicle license plates under this chapter. No special license plate may be issued to a person who is temporarily disabled. A person who has a condition expected to improve within six months may be issued a temporary placard for a period not to exceed six months. The director may issue a second temporary placard during that period if requested by the person who is temporarily disabled. If the condition exists after six months a new temporary placard shall be issued upon receipt of a new certification from the disabled person's physician. The parking placard of a disabled person shall be renewed, when required by the director, by satisfactory proof of the right to continued use of the privileges.

(5) Additional fees shall not be charged for the issuance of the special placards. No additional fee may be charged for the issuance of the special license plates except the regular motor vehicle registration fee and any other fees and taxes required to be paid upon registration of a motor vehicle.

(6) Any unauthorized use of the special placard or the special license plate is a misdemeanor.

(7) It is a traffic infraction, with a monetary penalty of not less than fifteen and not more than fifty dollars for any person to park a vehicle in a parking place provided on private property without charge or on public property reserved for physically disabled persons without a special license plate or placard. If a person is charged with a violation, the person shall not be determined to have committed an infraction if the person produces in court or before the court appearance the special license plate or placard required under this section.

(8) It is a misdemeanor for any person to willfully obtain a special license plate or placard in a manner other than that established under this section. [1991 c 339 § 21; 1990 c 24 § 1; 1986 c 96 § 1; 1984 c 154 § 2.]

Intent—1984 c 154: "The legislature intends to extend special parking privileges to persons with disabilities that substantially impair mobility." [1984 c 154 § 1.]

Application—1984 c 154: "This act applies to special license plates, cards, or decals issued after June 7, 1984. Nothing in this act invalidates special license plates, cards, or decals issued before June 7, 1984." [1984 c 154 § 9.]

Severability—1984 c 154: "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." [1984 c 154 § 10.]

46.16.390 Special plate or card issued by another jurisdiction. A special license plate or card issued by another state or country that indicates an occupant of the vehicle is disabled, entitles the vehicle on or in which it is displayed and being used to transport the disabled person to lawfully park in a parking place reserved for physically disabled persons pursuant to chapter 70.92 RCW or authority implemental thereof. [1991 c 339 § 22; 1984 c 51 § 1.]

46.16.606 Personalized license plates—Additional fee. In addition to the fees imposed in RCW 46.16.585 for application and renewal of personalized license plates an additional fee of ten dollars shall be charged. The revenue from the additional fee shall be deposited in the state wildlife fund and used for the management of resources associated with the nonconsumptive use of wildlife. [1991 1st sp.s. c 7 § 13.]

Effective date—1991 1st sp.s. c 7: See note following RCW 77.32.101.

46.16.620 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

46.16.625 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

46.16.660 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

46.16.670 Boat trailers—Fee for freshwater aquatic weeds account. In addition to any other fee required under this chapter, boat trailers shall annually pay a fee of three dollars. The proceeds of this fee shall be deposited in the freshwater aquatic weeds account under RCW 43.21A.650. [1991 c 302 § 3.]

Effective date—1991 c 302: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991, except section 3 of this act shall be effective for vehicle registrations that expire August 31, 1992, and thereafter." [1991 c 302 § 6.]

Findings—1991 c 302: See note following RCW 43.21A.650.

46.16.710 Driving without valid license—Confiscation and marking of registration and license plates. (Effective until July 1, 1993.) (1) At the time of arrest for a violation of RCW 46.20.021, 46.20.342(1), or 46.20.420, the arresting officer shall confiscate the Washington state vehicle registration of the vehicle being driven by the arrested person. The officer shall mark the vehicle's Washington state license plates in accordance with procedures prescribed by the Washington state patrol. Marked license plates shall be clearly distinguishable from any other authorized plates. Upon confiscation of the vehicle registration, the arresting officer shall, on behalf of the department, serve notice in accordance with RCW 46.16.730 of the department's intention to cancel the vehicle registration in accordance with RCW 46.16.720. The officer shall immediately replace any confiscated vehicle registration with a temporary registration that expires sixty days after the arrest, or at the time the department's cancellation is sustained at a hearing conducted under RCW 46.16.740, whichever occurs first. The provisions of this subsection may be used only when the arresting officer has determined that the arrested driver is a registered owner of the vehicle.

(2) After confiscation under subsection (1) of this section, the arresting officer shall promptly transmit to the department, together with the confiscated vehicle registration, a sworn report indicating that the officer had reasonable grounds to believe that the arrested driver was driving in violation of RCW 46.20.342(1).

(3) Any officer who sees a vehicle being operated with marked license plates may stop the vehicle for the sole purpose of ascertaining whether the driver of the vehicle is operating it in violation of RCW 46.20.021, 46.20.342, or 46.20.420. Nothing in this section prohibits the arrest of a person for an offense if an officer has probable cause to believe the person has committed the offense. [1991 c 293 § 2; 1987 c 388 § 2.]

Effective date—Expiration date—1987 c 388 (part): "Sections 1 through 8 of this act shall take effect on July 1, 1988. The director of licensing shall take such steps as are necessary to insure that this act is implemented on its effective date. Sections 2 through 7 of this act shall expire on July 1, 1993." [1987 c 388 § 13.]

Report to legislature—1987 c 388: "The department of licensing shall report to the legislature no later than January 1, 1991, on the implementation of this 1987 act. The department shall indicate the revenue and expenditure effects of the act and shall estimate its effect on the incidence of unlicensed driving in the state." [1987 c 388 § 15.]

Reviser's note: This act [1987 c 388] consisted of the amendment of RCW 46.12.020, 46.12.240, 46.20.342, and 46.63.020 and the enactment of RCW 46.16.011 and 46.16.710 through 46.16.760.

Severability—1987 c 388: "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." [1987 c 388 § 16.]

Chapter 46.20

DRIVERS' LICENSES—IDENTICARDS

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46.20.021 Driver's license required—Penalty—Surrender of other license—Local license not required.

(1) No person, except as expressly exempted by this chapter, may drive any motor vehicle upon a highway in this state unless the person has a valid driver's license issued to Washington residents under the provisions of

this chapter. A violation of this subsection is a misdemeanor and is a lesser included offense within the offenses described in RCW 46.20.342(1) or 46.20.420.

(2) For the purposes of obtaining a valid driver's license, a resident is a person who manifests an intent to live or be located in this state on more than a temporary or transient basis. Evidence of residency includes but is not limited to:

- (a) Becoming a registered voter in this state; or
- (b) Receiving benefits under one of the Washington public assistance programs; or
- (c) Declaring that he or she is a resident for the purpose of obtaining a state license or tuition fees at resident rates.

(3) The term "Washington public assistance programs" referred to in subsection (2)(b) of this section includes only public assistance programs for which more than fifty percent of the combined costs of benefits and administration are paid from state funds. Programs which are not included within the term "Washington public assistance programs" pursuant to the above criteria include, but are not limited to the food stamp program under the federal food stamp act of 1964; programs under the child nutrition act of 1966, 42 U.S.C. Secs. 1771 through 1788; and aid to families with dependent children, 42 U.S.C. Secs. 601 through 606.

(4) No person shall receive a driver's license unless and until he or she surrenders to the department all valid driver's licenses in his or her possession issued to him or her by any other jurisdiction. The department shall establish a procedure to invalidate the surrendered photograph license and return it to the person. The invalidated license, along with the valid temporary Washington driver's license provided for in RCW 46.20.055(3), shall be accepted as proper identification. The department shall notify the issuing department that the licensee is now licensed in a new jurisdiction. No person shall be permitted to have more than one valid driver's license at any time.

(5) New Washington residents are allowed thirty days from the date they become residents as defined in this section to procure a valid Washington driver's license.

(6) Any person licensed as a driver under this chapter may exercise the privilege thereby granted upon all streets and highways in this state and shall not be required to obtain any other license to exercise such privilege by any county, municipal or local board, or body having authority to adopt local police regulations. [1991 c 293 § 3; 1991 c 73 § 1; 1990 c 250 § 33; 1988 c 88 § 1; 1985 c 302 § 2; 1979 ex.s. c 136 § 53; 1965 ex.s. c 121 § 2.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Reviser's note: (1) This section was amended by 1991 c 73 § 1 and by 1991 c 293 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

(2) Throughout chapter 46.20 RCW the phrases "this 1965 amendatory act" and "this act" have been changed to "this chapter." The 1965 amendatory act [1965 ex.s. c 121] consisted of RCW 46.20.021 through 46.20.055, 46.20.091, 46.20.161 through 46.20.181, 46.20.205,

46.20.207, 46.20.215, 46.20.285, 46.20.291, 46.20.305 through 46.20.315, 46.20.322 through 46.20.336, 46.20.342 through 46.20.344, 46.20.900, 46.20.910, and 46.64.025, the 1965 amendments to RCW 46.20.102 through 46.20.106, 46.20.120 through 46.20.140, 46.20.190, 46.20.200, 46.20.270, and 46.20.340 and 1965 ex.s. c 121 § 1, footnoted after RCW 46.20.021.

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Purpose—Construction—1965 ex.s. c 121: "With the advent of greatly increased interstate vehicular travel and the migration of motorists between the states, the legislature recognizes the necessity of enacting driver licensing laws which are reasonably uniform with the laws of other states and are at the same time based upon sound, realistic principles, stated in clear explicit language. To achieve these ends the legislature does hereby adopt this 1965 amendatory act relating to driver licensing modeled after the Uniform Vehicle Code subject to such variances as are deemed better suited to the people of this state. It is intended that this 1965 amendatory act be liberally construed to effectuate the purpose of improving the safety of our highways through driver licensing procedures within the framework of the traditional freedoms to which every motorist is entitled." [1965 ex.s. c 121 § 1.] For application of this section see reviser's note above.

Impoundment of vehicle for driver's license violations—Release, when—Court hearing: RCW 46.20.435.

License plates and registration, confiscation and marking: RCW 46.16.710.

46.20.055 Instruction permits and temporary licenses. (1) Any person who is at least fifteen and a half years of age may apply to the department for an instruction permit for the operation of any motor vehicle except a motorcycle. Any person sixteen years of age or older, holding a valid driver's license, may apply for an instruction permit for the operation of a motorcycle. The department may in its discretion, after the applicant has successfully passed all parts of the examination other than the driving test, issue to the applicant a driver's or motorcyclist's instruction permit.

(a) A driver's instruction permit entitles the permittee while having the permit in immediate possession to drive a motor vehicle upon the public highways for a period of one year when accompanied by a licensed driver who has had at least five years of driving experience and is occupying a seat beside the driver. Except as provided in subsection (c) of this subsection, only one additional permit, valid for one year, may be issued.

(b) A motorcyclist's instruction permit entitles the permittee while having the permit in immediate possession to drive a motorcycle upon the public highways for a period of ninety days as provided in *RCW 46.20.510(3). Except as provided in subsection (c) of this subsection, only one additional permit, valid for ninety days, may be issued.

(c) The department after investigation may issue a third driver's or motorcyclist's instruction permit when it finds that the permittee is diligently seeking to improve driving proficiency.

(2) The department may waive the examination, except as to eyesight and other potential physical restrictions, for any applicant who is enrolled in either a traffic safety education course as defined by RCW 28A.220.020(2) or a course of instruction offered by a licensed driver training school as defined by RCW 46.82.280(1) at the time the application is being considered by the department. The department may require

proof of registration in such a course as it deems necessary.

(3) The department upon receiving proper application may in its discretion issue a driver's instruction permit to an applicant who is at least fifteen years of age and is enrolled in a traffic safety education program which includes practice driving and which is approved and accredited by the superintendent of public instruction. Such instruction permit shall entitle the permittee having the permit in immediate possession to drive a motor vehicle only when an approved instructor or other licensed driver with at least five years of driving experience, is occupying a seat beside the permittee.

(4) The department may in its discretion issue a temporary driver's permit to an applicant for a driver's license permitting the applicant to drive a motor vehicle for a period not to exceed sixty days while the department is completing its investigation and determination of all facts relative to such applicant's right to receive a driver's license. Such permit must be in the permittee's immediate possession while driving a motor vehicle, and it shall be invalid when the permittee's license has been issued or for good cause has been refused. [1990 c 250 § 34; 1986 c 17 § 1; 1985 c 234 § 1; 1981 c 260 § 10. Prior: 1979 c 63 § 1; 1979 c 61 § 3; 1969 ex.s. c 218 § 8; 1965 ex.s. c 121 § 7.]

*Reviser's note: RCW 46.20.510 was amended by 1989 c 337 § 9, and the previous subsection (3) was renumbered as subsection (2).

Severability—1990 c 250: See note following RCW 46.16.301.

46.20.091 Application for license or instruction permit—Fees—Driving records from other jurisdictions. (1) Every application for an instruction permit or for an original driver's license shall be made upon a form prescribed and furnished by the department which shall be sworn to and signed by the applicant before a person authorized to administer oaths. Every application for an instruction permit containing a photograph shall be accompanied by a fee of five dollars. The department shall forthwith transmit the fees collected for instruction permits and temporary drivers' permits to the state treasurer.

(2) Every such application shall state the full name, date of birth, sex, and Washington residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has theretofore been licensed as a driver or chauffeur, and, if so, when and by what state or country, and whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and, if so, the date of and reason for such suspension, revocation, or refusal, and shall state such additional information as the department shall require.

(3) Whenever application is received from a person previously licensed in another jurisdiction, the department shall request a copy of such driver's record from such other jurisdiction. When received, the driving record shall become a part of the driver's record in this state.

(4) Whenever the department receives request for a driving record from another licensing jurisdiction, the

record shall be forwarded without charge if the other licensing jurisdiction extends the same privilege to the state of Washington. Otherwise there shall be a reasonable charge for transmittal of the record, the amount to be fixed by the director of the department. [1990 c 250 § 35; 1985 ex.s. c 1 § 2; 1979 c 63 § 2; 1965 ex.s. c 121 § 8.]

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

46.20.100 Application of minor under eighteen—Cosignature, traffic safety education course required—Exception. The department of licensing shall not consider an application of any minor under the age of eighteen years for a driver's license or the issuance of a motorcycle endorsement for a particular category unless:

(1) The application is also signed by a parent or guardian having the custody of such minor, or in the event a minor under the age of eighteen has no father, mother, or guardian, then a driver's license shall not be issued to the minor unless his or her application is also signed by the minor's employer; and

(2) The applicant has satisfactorily completed a traffic safety education course as defined in RCW 28A.220.020, conducted by a recognized secondary school, that meets the standards established by the office of the state superintendent of public instruction or the applicant has satisfactorily completed a traffic safety education course, conducted by a commercial driving instruction enterprise, that meets the standards established by the office of the superintendent of public instruction and is officially approved by that office on an annual basis: PROVIDED, HOWEVER, That the director may upon a showing that an applicant was unable to take or complete a driver education course waive that requirement if the applicant shows to the satisfaction of the department that a need exists for the applicant to operate a motor vehicle and he or she has the ability to operate a motor vehicle in such a manner as not to jeopardize the safety of persons or property, under rules to be promulgated by the department in concert with the supervisor of the traffic safety education section, office of the superintendent of public instruction. For a person under the age of eighteen years to obtain a motorcycle endorsement, he or she must successfully complete a motorcycle safety education course that meets the standards established by the department of licensing.

The department may waive any education requirement under this subsection for an applicant previously licensed to drive a motor vehicle or motorcycle outside this state if the applicant provides proof satisfactory to the department that he or she has had education equivalent to that required under this subsection. [1990 c 250 § 36; 1985 c 234 § 2; 1979 c 158 § 146; 1973 1st ex.s. c 154 § 87; 1972 ex.s. c 71 § 1; 1969 ex.s. c 218 § 10; 1967 c 167 § 1; 1965 ex.s. c 170 § 43; 1961 c 12 § 46.20.100. Prior: 1937 c 188 § 51; RRS § 6312-51; 1921 c 108 § 6, part; RRS § 6368, part.]

Severability—1990 c 250: See note following RCW 46.16.301.

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

46.20.118 Negative file. The department shall maintain a negative file. It shall contain negatives of all pictures taken by the department of licensing as authorized by RCW 46.20.070 through 46.20.119. Negatives in the file shall not be available for public inspection and copying under chapter 42.17 RCW. The department may make the file available to official governmental enforcement agencies to assist in the investigation by the agencies of suspected criminal activity. The department may also provide a print to the driver's next of kin in the event the driver is deceased. [1990 c 250 § 37; 1981 c 22 § 1; 1979 c 158 § 149; 1969 ex.s. c 155 § 5.]

Severability—1990 c 250: See note following RCW 46.16.301.

Purpose—1969 ex.s. c 155: "The identification of the injured or the seriously ill is often difficult. The need for an identification file to facilitate use by proper law enforcement officers has hampered law enforcement. Personal identification for criminal, personal and commercial reasons is becoming most important at a time when it is increasingly difficult to accomplish. The legislature finds that the public health and welfare requires a standard and readily recognizable means of identification of each person living within the state. The legislature further finds that the need for an identification file by law enforcement agencies must be met. The use of photographic drivers' licenses will greatly aid the problem, but some means of identification must be provided for persons who do not possess a driver's license. The purpose of this 1969 amendatory act is to provide for the positive identification of persons, both through an expanded use of drivers' licenses and also through issue of personal identification cards for nondrivers." [1969 ex.s. c 155 § 1.]

Effective date—1969 ex.s. c 155: "This 1969 amendatory act shall take effect September 1, 1969." [1969 ex.s. c 155 § 7.]

46.20.119 Rules and regulations to be reasonable. The rules and regulations adopted pursuant to RCW 46.20.070 through 46.20.119 shall be reasonable in view of the purposes to be served by RCW 46.20.070 through 46.20.119. [1990 c 250 § 38; 1969 ex.s. c 155 § 6.]

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—**Purpose**—1969 ex.s. c 155: See notes following RCW 46.20.118.

46.20.120 Examination of license applicants—Late renewal penalty—Exceptions. No new driver's license may be issued and no previously issued license may be renewed until the applicant therefor has successfully passed a driver licensing examination. However, the department may waive all or any part of the examination of any person applying for the renewal of a driver's license except when the department determines that an applicant for a driver's license is not qualified to hold a driver's license under this title. The department may also waive the actual demonstration of the ability to operate a motor vehicle by a person who surrenders a valid driver's license issued by the person's previous home state and who is otherwise qualified to be licensed. For a new license examination a fee of seven dollars shall be paid by each applicant, in addition to the fee charged for issuance of the license. A new license is one issued to a driver who has not been previously licensed in this state or to a driver whose last previous Washington license has been expired for more than four years.

Any person renewing his or her driver's license more than sixty days after the license has expired shall pay a penalty fee of ten dollars in addition to the renewal fee under RCW 46.20.181. The penalty fee shall be deposited in the highway safety fund.

Any person who is outside the state at the time his or her driver's license expires or who is unable to renew the license due to any incapacity may renew the license within sixty days after returning to this state or within sixty days after the termination of any such incapacity without the payment of the penalty fee.

The department shall provide for giving examinations at places and times reasonably available to the people of this state. [1990 c 9 § 1; 1988 c 88 § 2; 1985 ex.s. c 1 § 4; 1979 c 61 § 6; 1975 1st ex.s. c 191 § 2; 1967 c 167 § 4; 1965 ex.s. c 121 § 9; 1961 c 12 § 46.20.120. Prior: 1959 c 284 § 1; 1953 c 221 § 2; 1937 c 188 § 55, part; RRS § 6312-55, part.]

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

46.20.130 Content and conduct of examinations. The director shall prescribe the content of the driver licensing examination and the manner of conducting the examination, which shall include but is not limited to:

(1) A test of the applicant's eyesight and ability to see, understand, and follow highway signs regulating, warning, and directing traffic;

(2) A test of the applicant's knowledge of traffic laws and ability to understand and follow the directives of lawful authority, orally or graphically, that regulate, warn, and direct traffic in accordance with the traffic laws of this state;

(3) An actual demonstration of the applicant's ability to operate a motor vehicle in such a manner as not to jeopardize the safety of persons or property; and

(4) Such further examination as the director deems necessary (a) to determine whether any facts exist which would bar the issuance of a vehicle operator's license under chapters 46.20, 46.21, and 46.29 RCW, and (b) to determine the applicant's fitness to operate a motor vehicle safely on the highways; and

(5) In addition to the foregoing, when the applicant desires to drive a motorcycle, as defined in RCW 46.04-.330, or a motor-driven cycle, as defined in RCW 46.04.332, the applicant shall also demonstrate the ability to operate such motorcycle or motor-driven cycle in such a manner as not to jeopardize the safety of persons or property. [1990 c 250 § 39; 1981 c 245 § 4; 1967 c 232 § 2; 1965 ex.s. c 121 § 10; 1961 c 12 § 46.20.130. Prior: 1959 c 284 § 2; 1943 c 151 § 1; 1937 c 188 § 57; Rem. Supp. 1943 § 6312-57.]

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—1981 c 245: See note following RCW 46.20.161.

46.20.155 Voter registration—Licensing agent's duties. (Effective January 1, 1992.) Before issuing an original license or identification card or renewing a license or identification card under this chapter, the licensing agent shall determine if the applicant wants to register to vote or transfer his or her voter registration.

If the applicant chooses to register or transfer a registration, the agent shall provide the applicant with a voter registration form and instructions and shall record that the applicant has requested to register to vote or transfer a voter registration. [1990 c 143 § 6.]

Effective date—1990 c 143 §§ 1-8: See note following RCW 29.07.260.

Voter registration with driver licensing: RCW 29.07.260 through 29.07.320.

46.20.161 Issuance of license—License contents—Fee. The department, upon receipt of a fee of fourteen dollars, which includes the fee for the required photograph, shall issue to every applicant qualifying therefor a driver's license, which license shall bear thereon a distinguishing number assigned to the licensee, the full name, date of birth, Washington residence address, and a brief description of the licensee, and either a facsimile of the signature of the licensee or a space upon which the licensee shall write his usual signature with pen and ink immediately upon receipt of the license. No license is valid until it has been so signed by the licensee. [1990 c 250 § 40; 1981 c 245 § 1; 1975 1st ex.s. c 191 § 3; 1969 c 99 § 6; 1965 ex.s. c 121 § 11.]

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—1981 c 245: "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 July 1, 1981." [1981 c 245 § 5.]

Effective date—1969 c 99: See note following RCW 43.51.060.

46.20.171 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

46.20.181 Expiration date—Renewal—Fee. Every driver's license expires on the fourth anniversary of the licensee's birthdate following the issuance of the license. Every such license is renewable on or before its expiration upon application prescribed by the department and the payment of a fee of fourteen dollars. This fee includes the fee for the required photograph. [1990 c 250 § 41; 1981 c 245 § 2; 1975 1st ex.s. c 191 § 4; 1969 c 99 § 7; 1965 ex.s. c 170 § 46; 1965 ex.s. c 121 § 17.]

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—1981 c 245: See note following RCW 46.20.161.

Effective date—1969 c 99: See note following RCW 43.51.060.

46.20.187 Registration of sex offenders—Notice to persons applying for or renewing a driver's license or identicard. The department, at the time a person renews his or her driver's license or identicard, or surrenders a driver's license from another jurisdiction pursuant to RCW 46.20.021 and makes an application for a driver's license or an identicard, shall provide the applicant with written information on the registration requirements of RCW 9A.44.130. [1990 c 3 § 407.]

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

46.20.207 Cancellation—Grounds. (1) The department is authorized to cancel any driver's license upon

[1990-91 RCW Supp—page 1124]

determining that the licensee was not entitled to the issuance of the license, or that the licensee failed to give the required or correct information in his or her application, or that the licensee is incompetent to drive a motor vehicle for any of the reasons under RCW 46.20.031 (5) and (8).

(2) Upon such cancellation, the licensee must surrender the license so canceled to the department. [1991 c 293 § 4; 1965 ex.s. c 121 § 20.]

46.20.265 Revocation of juvenile driving privileges—Alcohol or drug violations. (1) In addition to any other authority to revoke driving privileges under this chapter, the department shall revoke all driving privileges of a juvenile when the department receives notice from a court pursuant to RCW 13.40.265, 66.44-.365, 69.41.065, 69.50.420, 69.52.070, or a substantially similar municipal ordinance adopted by a local legislative authority, or from a diversion unit pursuant to RCW 13.40.265. The revocation shall be imposed without hearing.

(2) The driving privileges of the juvenile revoked under subsection (1) of this section shall be revoked in the following manner:

(a) Upon receipt of the first notice, the department shall impose a revocation for one year, or until the juvenile reaches seventeen years of age, whichever is longer.

(b) Upon receipt of a second or subsequent notice, the department shall impose a revocation for two years or until the juvenile reaches eighteen years of age, whichever is longer.

(3) If the department receives notice from a court that the juvenile's privilege to drive should be reinstated, the department shall immediately reinstate any driving privileges that have been revoked under this section.

(4)(a) If the department receives notice pursuant to RCW 13.40.265(2)(b) from a diversion unit that a juvenile has completed a diversion agreement for which the juvenile's driving privileges were revoked, the department shall reinstate any driving privileges revoked under this section as provided in (b) of this subsection.

(b) If the diversion agreement was for the juvenile's first violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department shall not reinstate the juvenile's privilege to drive until the later of ninety days after the date the juvenile turns sixteen or ninety days after the juvenile entered into a diversion agreement for the offense. If the diversion agreement was for the juvenile's second or subsequent violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department shall not reinstate the juvenile's privilege to drive until the later of the date the juvenile turns seventeen or one year after the juvenile entered into the second or subsequent diversion agreement. [1991 c 260 § 1; 1989 c 271 § 117; 1988 c 148 § 7.]

Severability—1989 c 271: See note following RCW 9.94A.310.

Legislative finding—Severability—1988 c 148: See notes following RCW 13.40.265.

46.20.270 Conviction of offense requiring license suspension or revocation—Procedure—Forwarding

of records—Municipalities to report parking violations—Terms defined. (1) Whenever any person is convicted of any offense for which this title makes mandatory the suspension or revocation of the driver's license of such person by the department, the privilege of the person to operate a vehicle is suspended until the department takes the action required by this chapter, and the court in which such conviction is had shall forthwith secure the immediate forfeiture of the driver's license of such convicted person and immediately forward such driver's license to the department, and on failure of such convicted person to deliver such driver's license the judge shall cause such person to be confined for the period of such suspension or revocation or until such driver's license is delivered to such judge: **PROVIDED**, That if the convicted person testifies that he or she does not and at the time of the offense did not have a current and valid vehicle driver's license, the judge shall cause such person to be charged with the operation of a motor vehicle without a current and valid driver's license and on conviction punished as by law provided, and the department may not issue a driver's license to such persons during the period of suspension or revocation: **PROVIDED, ALSO**, That if the driver's license of such convicted person has been lost or destroyed and such convicted person makes an affidavit to that effect, sworn to before the judge, the convicted person may not be so confined, but the department may not issue or re-issue a driver's license for such convicted person during the period of such suspension or revocation: **PROVIDED**, That perfection of notice of appeal shall stay the execution of sentence including the suspension and/or revocation of the driver's license.

(2) Every court having jurisdiction over offenses committed under this chapter, or any other act of this state or municipal ordinance adopted by a local authority regulating the operation of motor vehicles on highways, or any federal authority having jurisdiction over offenses substantially the same as those set forth in Title 46 RCW which occur on federal installations within this state, shall forward to the department within ten days of a forfeiture of bail or collateral deposited to secure the defendant's appearance in court, a payment of a fine or penalty, a plea of guilty or a finding of guilt, or a finding that any person has committed a traffic infraction an abstract of the court record in the form prescribed by rule of the supreme court, showing the conviction of any person or the finding that any person has committed a traffic infraction in said court for a violation of any said laws other than regulations governing standing, stopping, parking, and pedestrian offenses.

(3) Every municipality having jurisdiction over offenses committed under this chapter, or under any other act of this state or municipal ordinance adopted by a local authority regulating the operation of motor vehicles on highways, may forward to the department within ten days of failure to respond, failure to pay a penalty, failure to appear at a hearing to contest the determination that a violation of any statute, ordinance, or regulation relating to standing, stopping, or parking has been committed, or failure to appear at a hearing to explain

mitigating circumstances, an abstract of the citation record in the form prescribed by rule of the department, showing the finding by such municipality that two or more violations of laws governing standing, stopping, and parking have been committed and indicating the nature of the defendant's failure to act. Such violations may not have occurred while the vehicle is stolen from the registered owner or is leased or rented under a bona fide commercial vehicle lease or rental agreement between a lessor engaged in the business of leasing vehicles and a lessee who is not the vehicle's registered owner. The department may enter into agreements of reciprocity with the duly authorized representatives of the states for reporting to each other violations of laws governing standing, stopping, and parking.

(4) For the purposes of Title 46 RCW the term "conviction" means a final conviction in a state or municipal court or by any federal authority having jurisdiction over offenses substantially the same as those set forth in Title 46 RCW which occur on federal installations in this state, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt on a traffic law violation charge, regardless of whether the imposition of sentence or sanctions are deferred or the penalty is suspended, but not including entry into a deferred prosecution agreement under chapter 10.05 RCW.

(5) For the purposes of Title 46 RCW the term "finding that a traffic infraction has been committed" means a failure to respond to a notice of infraction or a determination made by a court pursuant to this chapter. Payment of a monetary penalty made pursuant to RCW 46.63.070(2) is deemed equivalent to such a finding. [1990 2nd ex.s. c 1 § 402; 1990 c 250 § 42; 1982 1st ex.s. c 14 § 5; 1979 ex.s. c 136 § 58; 1979 c 61 § 7; 1977 ex.s. c 3 § 1; 1967 ex.s. c 145 § 55; 1965 ex.s. c 121 § 22; 1961 c 12 § 46.20.270. Prior: 1937 c 188 § 68; RRS § 6312–68; prior: 1923 c 122 § 2, part; 1921 c 108 § 9, part; RRS § 6371, part.]

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—Severability—1982 1st ex.s. c 14: See notes following RCW 46.63.060.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability—1967 ex.s. c 145: See RCW 47.98.043.

46.20.285 Offenses requiring revocation of license.

The department shall forthwith revoke the license of any driver for the period of one calendar year unless otherwise provided in this section, upon receiving a record of the driver's conviction of any of the following offenses, when the conviction has become final:

(1) For vehicular homicide the period of revocation shall be two years;

(2) Vehicular assault;

(3) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle,

upon a showing by the department's records that the conviction is the second such conviction for the driver within a period of five years. Upon a showing that the conviction is the third such conviction for the driver within a period of five years, the period of revocation shall be two years;

(4) Any felony in the commission of which a motor vehicle is used;

(5) Failure to stop and give information or render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another or resulting in damage to a vehicle that is driven or attended by another;

(6) Perjury or the making of a false affidavit or statement under oath to the department under Title 46 RCW or under any other law relating to the ownership or operation of motor vehicles;

(7) Reckless driving upon a showing by the department's records that the conviction is the third such conviction for the driver within a period of two years. [1990 c 250 § 43; 1985 c 407 § 2; 1984 c 258 § 324; 1983 c 165 § 16; 1983 c 165 § 15; 1965 ex.s. c 121 § 24.]

Severability—1990 c 250: See note following RCW 46.16.301.

Effective dates—1985 c 407: See note following RCW 46.04.480.

Court Improvement Act of 1984—**Effective dates**—**Severability**—**Short title**—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

Legislative finding, intent—**Effective dates**—**Severability**—1983 c 165: See notes following RCW 46.20.308.

Revocation of license for attempting to elude pursuing police vehicle: RCW 46.61.024.

Suspension or revocation of license for driving under the influence of intoxicating liquor or drugs: RCW 46.61.515.

Vehicular assault, penalty: RCW 46.61.522.

Vehicular homicide, penalty: RCW 46.61.520.

46.20.291 Authority to suspend licenses—Grounds.

The department is authorized to suspend the license of a driver upon a showing by its records or other sufficient evidence that the licensee:

(1) Has committed an offense for which mandatory revocation or suspension of license is provided by law;

(2) Has, by reckless or unlawful operation of a motor vehicle, caused or contributed to an accident resulting in death or injury to any person or serious property damage;

(3) Has been convicted of offenses against traffic regulations governing the movement of vehicles, or found to have committed traffic infractions, with such frequency as to indicate a disrespect for traffic laws or a disregard for the safety of other persons on the highways;

(4) Is incompetent to drive a motor vehicle for any of the reasons enumerated in subsection (4) of RCW 46.20.031; or

(5) Has committed one of the prohibited practices relating to drivers' licenses defined in RCW 46.20.336. [1991 c 293 § 5; 1980 c 128 § 12; 1965 ex.s. c 121 § 25.]

Effective date—**Severability**—1980 c 128: See notes following RCW 46.63.060.

Reckless driving, suspension of license: RCW 46.61.500.

Vehicular assault

drug and alcohol evaluation and treatment: RCW 46.61.524.
penalty: RCW 46.61.522.

Vehicular homicide

drug and alcohol evaluation and treatment: RCW 46.61.524.
penalty: RCW 46.61.520.

46.20.293 Record of traffic charges of minors furnished to juvenile court—Authority to furnish other requested services to court, parents, or guardians. The department is authorized to provide juvenile courts with the department's record of traffic charges compiled under RCW 46.52.100 and 13.50.200, against any minor upon the request of any state juvenile court or duly authorized officer of any juvenile court of this state. Further, the department is authorized to provide any juvenile court with any requested service which the department can reasonably perform which is not inconsistent with its legal authority which substantially aids juvenile courts in handling traffic cases and which promotes highway safety.

The department is authorized to furnish to the parent, parents, or guardian of any person under eighteen years of age who is not emancipated from such parent, parents, or guardian, the department records of traffic charges compiled against the person and shall collect for the copy a fee of four dollars and fifty cents to be deposited in the highway safety fund. [1990 c 250 § 44; 1979 c 61 § 9; 1977 ex.s. c 3 § 2; 1971 ex.s. c 292 § 45; 1969 ex.s. c 170 § 14; 1967 c 167 § 10.]

Severability—1990 c 250: See note following RCW 46.16.301.

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

46.20.311 Duration of suspension or revocation—Conditions for reissuance or renewal. (1) The department shall not suspend a driver's license or privilege to drive a motor vehicle on the public highways for a fixed period of more than one year, except as permitted under RCW 46.20.342 or 46.61.515. Whenever the license or driving privilege of any person is suspended by reason of a conviction, a finding that a traffic infraction has been committed, pursuant to chapter 46.29 RCW, or pursuant to RCW 46.20.291, the suspension shall remain in effect until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW. The department shall not issue to the person a new, duplicate, or renewal license until the person pays a reissue fee of twenty dollars. If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, the reissue fee shall be fifty dollars.

(2) Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked, unless the revocation was for a cause which has been removed, is not entitled to have the license or privilege renewed or restored until: (a) After the expiration of one year from the date the license or privilege to drive was revoked; (b) after the expiration of the applicable revocation period provided by RCW 46.61.515(3) (b) or (c); (c) after the expiration of two years for persons convicted of vehicular homicide; (d) after the expiration of one year in cases of revocation for the first refusal

within five years to submit to a chemical test under RCW 46.20.308; (e) after the expiration of two years in cases of revocation for the second refusal within five years to submit to a chemical test under RCW 46.20.308; or (f) after the expiration of the applicable revocation period provided by RCW 46.20.265. After the expiration of the appropriate period, the person may make application for a new license as provided by law together with a reissue fee in the amount of twenty dollars, but if the revocation is the result of a violation of RCW 46.20.308, 46.61.502, or 46.61.504, the reissue fee shall be fifty dollars. Except for a revocation under RCW 46.20.265, the department shall not then issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant the privilege of driving a motor vehicle on the public highways, and until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW. For a revocation under RCW 46.20.265, the department shall not issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant that person the privilege of driving a motor vehicle on the public highways.

(3) Whenever the driver's license of any person is suspended pursuant to Article IV of the nonresident violators compact or RCW 46.23.020, the department shall not issue to the person any new or renewal license until the person pays a reissue fee of twenty dollars. If the suspension is the result of a violation of the laws of another state, province, or other jurisdiction involving (a) the operation or physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor or drugs, or (b) the refusal to submit to a chemical test of the driver's blood alcohol content, the reissue fee shall be fifty dollars. [1990 c 250 § 45; 1988 c 148 § 9. Prior: 1985 c 407 § 4; 1985 c 211 § 1; 1984 c 258 § 325; 1983 c 165 § 18; 1983 c 165 § 17; 1982 c 212 § 5; 1981 c 91 § 1; 1979 ex.s. c 136 § 60; 1973 1st ex.s. c 36 § 1; 1969 c 1 § 2 (Initiative Measure No. 242, approved November 5, 1968); 1967 c 167 § 5; 1965 ex.s. c 121 § 27.]

Severability—1990 c 250: See note following RCW 46.16.301.

Legislative finding—Severability—1988 c 148: See notes following RCW 13.40.265.

Effective dates—1985 c 407: See note following RCW 46.04.480.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability, implied consent law—1969 c 1: See RCW 46.20.911.

46.20.326 Failure to appear or request driver improvement interview constitutes waiver—Procedure. Failure to appear for a driver improvement interview at the time and place stated by the department in its notice as provided in RCW 46.20.322 and 46.20.323 or failure to request a driver improvement interview within ten days as provided in RCW 46.20.325 constitutes a waiver

of a driver improvement interview, and the department may take action without such driver improvement interview, or the department may, upon request of the person whose privilege to drive may be affected, or at its own option, re-open the case, take evidence, change or set aside any order theretofore made, or grant a driver improvement interview. [1990 c 250 § 46; 1965 ex.s. c 121 § 33.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.20.336 Violations—Penalty. It is a misdemeanor for any person:

(1) To display or cause or permit to be displayed or have in his or her possession any fictitious or fraudulently altered driver's license or identicator;

(2) To lend his or her driver's license or identicator to any other person or knowingly permit the use thereof by another;

(3) To display or represent as one's own any driver's license or identicator not issued to him or her;

(4) Willfully to fail or refuse to surrender to the department upon its lawful demand any driver's license or identicator which has been suspended, revoked or canceled;

(5) To use a false or fictitious name in any application for a driver's license or identicator or to knowingly make a false statement or to knowingly conceal a material fact or otherwise commit a fraud in any such application;

(6) To permit any unlawful use of a driver's license or identicator issued to him or her. [1990 c 210 § 3; 1981 c 92 § 1; 1965 ex.s. c 121 § 41.]

Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.

46.20.338 Display or possession of canceled, revoked, suspended license or identicator. It is a traffic infraction for any person to display or cause or permit to be displayed or have in his or her possession any canceled, revoked, or suspended driver's license or identicator. [1990 c 210 § 4.]

46.20.342 Driving while license suspended or revoked—Penalties—Extension of suspension or revocation period. (1) It is unlawful for any person to drive a motor vehicle in this state while that person is in a suspended or revoked status or when his or her privilege to drive is suspended or revoked in this or any other state. Any person who has a valid Washington driver's license is not guilty of a violation of this section.

(a) A person found to be an habitual offender under chapter 46.65 RCW, who violates this section while an order of revocation issued under chapter 46.65 RCW prohibiting such operation is in effect, is guilty of driving while license suspended or revoked in the first degree, a gross misdemeanor. Upon the first such conviction, the person shall be punished by imprisonment for not less than ten days. Upon the second conviction, the person shall be punished by imprisonment for not less than ninety days. Upon the third or subsequent conviction, the person shall be punished by imprisonment for not less than one year. If the person is

also convicted of the offense defined in RCW 46.61.502 or 46.61.504, when both convictions arise from the same event, the minimum sentence of confinement shall be not less than ninety days. The minimum sentence of confinement required shall not be suspended or deferred. A conviction under this subsection does not prevent a person from petitioning for reinstatement as provided by RCW 46.65.080.

(b) A person who violates this section while an order of suspension or revocation prohibiting such operation is in effect and while the person is not eligible to reinstate his or her driver's license or driving privilege, other than for a suspension for the reasons described in (c) of this subsection, is guilty of driving while license suspended or revoked in the second degree, a gross misdemeanor. This subsection applies when a person's driver's license or driving privilege has been suspended or revoked by reason of:

(i) A conviction of a felony in the commission of which a motor vehicle was used;

(ii) A previous conviction under this section;

(iii) A notice received by the department from a court or diversion unit as provided by RCW 46.20.265, relating to a minor who has committed, or who has entered a diversion unit concerning an offense relating to alcohol, legend drugs, controlled substances, or imitation controlled substances;

(iv) A conviction of RCW 46.20.410, relating to the violation of restrictions of an occupational driver's license;

(v) A conviction of RCW 46.20.420, relating to the operation of a motor vehicle with a suspended or revoked license;

(vi) A conviction of RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(vii) A conviction of RCW 46.61.024, relating to attempting to elude pursuing police vehicles;

(viii) A conviction of RCW 46.61.500, relating to reckless driving;

(ix) A conviction of RCW 46.61.502 or 46.61.504, relating to a person under the influence of intoxicating liquor or drugs;

(x) A conviction of RCW 46.61.520, relating to vehicular homicide;

(xi) A conviction of RCW 46.61.522, relating to vehicular assault;

(xii) A conviction of RCW 46.61.530, relating to racing of vehicles on highways;

(xiii) A conviction of RCW 46.61.685, relating to leaving children in an unattended vehicle with motor running;

(xiv) A conviction of RCW 46.64.048, relating to attempting, aiding, abetting, coercing, and committing crimes; or

(xv) An administrative action taken by the department under chapter 46.20 RCW.

(c) A person who violates this section when his or her driver's license or driving privilege is, at the time of the violation, suspended or revoked solely because (i) the

person must furnish proof of satisfactory progress in a required alcoholism or drug treatment program, (ii) the person must furnish proof of financial responsibility for the future as provided by chapter 46.29 RCW, (iii) the person has failed to comply with the provisions of chapter 46.29 RCW relating to uninsured accidents, or (iv) the person has committed an offense in another state that, if committed in this state, would not be grounds for the suspension or revocation of the person's driver's license, or any combination of (i) through (iv), is guilty of driving while license suspended or revoked in the third degree, a misdemeanor.

(2) Upon receiving a record of conviction of any person or upon receiving an order by any juvenile court or any duly authorized court officer of the conviction of any juvenile under this section, the department shall:

(a) For a conviction of driving while revoked in the first degree, as provided by subsection (1)(a) of this section, extend the period of administrative revocation imposed under chapter 46.65 RCW for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license or have his or her driving privilege restored; or

(b) For a conviction of driving while suspended or revoked in the second degree, as provided by subsection (1)(b) of this section, not issue a new license or restore the driving privilege for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license or have his or her driving privilege restored; or

(c) Not extend the period of suspension or revocation if the conviction was under subsection (1)(c) of this section. If the conviction was under subsection (1) (a) or (b) of this section and the court recommends against the extension and the convicted person has obtained a valid driver's license, the period of suspension shall not be extended. [1991 c 293 § 6. Prior: 1990 c 250 § 47; 1990 c 210 § 5; 1987 c 388 § 1; 1985 c 302 § 3; 1980 c 148 § 3; prior: 1979 ex.s. c 136 § 62; 1979 ex.s. c 74 § 1; 1969 c 27 § 2; prior: 1967 ex.s. c 145 § 52; 1967 c 167 § 7; 1965 ex.s. c 121 § 43.]

Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—Severability—1987 c 388: See notes following RCW 46.16.710.

Effective date—1980 c 148: See note following RCW 46.10.090.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Impoundment of vehicle for driver's license violations—Release, when—Court hearing: RCW 46.20.435.

License plates and registration, confiscation and marking: RCW 46.16.710.

46.20.416 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

46.20.418 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

46.20.420 Operation of motor vehicle under other license or permit prohibited while license is suspended or revoked—Penalty. Any resident or nonresident whose driver's license or right or privilege to operate a motor vehicle in this state has been suspended or revoked as provided in this title shall not operate a motor vehicle in this state under a license, permit, or registration certificate issued by any other jurisdiction or otherwise during such suspension or after such revocation until a new license is obtained when and as permitted under this chapter. A person who violates the provisions of this section is guilty of a gross misdemeanor. [1990 c 210 § 6; 1985 c 302 § 5; 1967 c 32 § 35; 1961 c 134 § 2.]

Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.

Impoundment of vehicle for driver's license violations—Release, when—Court hearing: RCW 46.20.435.

License plates and registration, confiscation and marking: RCW 46.16.710.

46.20.599 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

46.20.911 Severability, implied consent law—1969 c 1. If any provision of RCW 46.20.308, 46.20.311, and 46.61.506 or its application to any person or circumstance is held invalid, the remainder of RCW 46.20.308, 46.20.311, and 46.61.506, or the application of the provision to other persons or circumstances is not affected. [1990 c 250 § 49; 1969 c 1 § 6 (Initiative Measure No. 242, approved November 5, 1968).]

Severability—1990 c 250: See note following RCW 46.16.301.

Chapter 46.25

UNIFORM COMMERCIAL DRIVER'S LICENSE ACT

Sections

46.25.050	Commercial driver's license required—Exceptions, restrictions.
46.25.070	Application—Change of address—Residency.
46.25.120	Test for alcohol or drugs—Disqualification for refusal of test or positive test.

46.25.050 Commercial driver's license required—Exceptions, restrictions. (1) Drivers of commercial motor vehicles shall obtain a commercial driver's license as required under this chapter by April 1, 1992. The director shall establish a program to convert all qualified commercial motor vehicle drivers by that date. After April 1, 1992, except when driving under a commercial driver's instruction permit and a valid automobile or classified license and accompanied by the holder of a commercial driver's license valid for the vehicle being driven, no person may drive a commercial motor vehicle unless the person holds and is in immediate possession of a commercial driver's license and applicable endorsements valid for the vehicle they are driving. However, this requirement does not apply to any person:

(a) Who is the operator of a farm vehicle, and the vehicle is:

- (i) Controlled and operated by a farmer;
- (ii) Used to transport either agricultural products, farm machinery, farm supplies, or any combination of those materials to or from a farm;
- (iii) Not used in the operations of a common or contract motor carrier; and
- (iv) Used within one hundred fifty miles of the person's farm; or

(b) Who is a fire fighter or law enforcement officer operating emergency equipment, and:

(i) The fire fighter or law enforcement officer has successfully completed a driver training course approved by the director; and

(ii) The fire fighter or law enforcement officer carries a certificate attesting to the successful completion of the approved training course; or

(c) Who is operating a recreational vehicle for non-commercial purposes. As used in this section, "recreational vehicle" includes a vehicle towing a horse trailer for a noncommercial purpose.

(2) No person may drive a commercial motor vehicle while his or her driving privilege is suspended, revoked, or canceled, while subject to disqualification, or in violation of an out-of-service order. Violations of this subsection shall be punished in the same way as violations of RCW 46.20.342(1). [1990 c 56 § 1; 1989 c 178 § 7.]

46.25.070 Application—Change of address—Residency. (1) The application for a commercial driver's license or commercial driver's instruction permit must include the following:

- (a) The full name and current mailing and residential address of the person;
- (b) A physical description of the person, including sex, height, weight, and eye color;
- (c) Date of birth;
- (d) The applicant's Social Security number;
- (e) The person's signature;
- (f) Certifications including those required by 49 C.F.R. part 383.71(a);
- (g) Proof of certification of physical examination or waiver, as required by 49 C.F.R. 391.41 through 391.49;
- (h) Any other information required by the department; and

(i) A consent to release driving record information to parties identified in chapter 46.52 RCW and this chapter.

(2) When a licensee changes his or her name, mailing address, or residence address, the person shall notify the department as provided in RCW 46.20.205.

(3) No person who has been a resident of this state for thirty days may drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction. [1991 c 73 § 2; 1989 c 178 § 9.]

46.25.120 Test for alcohol or drugs—Disqualification for refusal of test or positive test. (1) A person who drives a commercial motor vehicle within this state

is deemed to have given consent, subject to RCW 46.61-.506, to take a test or tests of that person's blood or breath for the purpose of determining that person's alcohol concentration or the presence of other drugs.

(2) A test or tests may be administered at the direction of a law enforcement officer, who after stopping or detaining the commercial motor vehicle driver, has probable cause to believe that driver was driving a commercial motor vehicle while having alcohol in his or her system.

(3) The law enforcement officer requesting the test under subsection (1) of this section shall warn the person requested to submit to the test that a refusal to submit will result in that person being disqualified from operating a commercial motor vehicle under RCW 46.25.090.

(4) If the person refuses testing, or submits to a test that discloses an alcohol concentration of 0.04 or more, the law enforcement officer shall submit a sworn report to the department certifying that the test was requested pursuant to subsection (1) of this section and that the person refused to submit to testing, or submitted to a test that disclosed an alcohol concentration of 0.04 or more.

(5) Upon receipt of the sworn report of a law enforcement officer under subsection (4) of this section, the department shall disqualify the driver from driving a commercial motor vehicle under RCW 46.25.090, subject to the hearing provisions of RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest. For the purposes of this section, the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle within this state while having alcohol in the person's system, whether the person refused to submit to the test or tests upon request of the officer after having been informed that the refusal would result in the disqualification of the person from driving a commercial motor vehicle, and, if the test was administered, whether the results indicated an alcoholic concentration in that person's blood of 0.04 percent or more. The department shall order that the disqualification of the person either be rescinded or sustained. Any decision by the department disqualifying a person from driving a commercial motor vehicle is stayed and does not take effect while a formal hearing is pending under this section or during the pendency of a subsequent appeal to superior court so long as there is no conviction for a moving violation or no finding that the person has committed a traffic infraction that is a moving violation during the pendency of the hearing and appeal. If the disqualification of the person is sustained after the hearing, the person who is disqualified may file a petition in the superior court of the county of arrest to review the final order of disqualification by the department in the manner provided in RCW 46.20.334. [1990 c 250 § 50; 1989 c 178 § 14.]

Severability—1990 c 250: See note following RCW 46.16.301.

Chapter 46.29

FINANCIAL RESPONSIBILITY

Sections

46.29.110	Failure to deposit security—Suspensions.
46.29.330	Suspension for nonpayment of judgments.
46.29.430	Additional proof required—Suspension or revocation for failure to give proof.
46.29.610	Surrender of license—Penalty.
46.29.625	Repealed.

46.29.110 Failure to deposit security—Suspensions. If a person required to deposit security under this chapter fails to deposit such security within sixty days after the department has sent the notice as hereinbefore provided, the department shall thereupon suspend:

(1) The driver's license of each driver in any manner involved in the accident;

(2) The driver's license of the owner of each vehicle of a type subject to registration under the laws of this state involved in the accident;

(3) If the driver or owner is a nonresident, the privilege of operating within this state a vehicle of a type subject to registration under the laws of this state.

Such suspensions shall be made in respect to persons required by the department to deposit security who fail to deposit such security except as otherwise provided under succeeding sections of this chapter. [1990 c 250 § 51; 1987 c 378 § 1; 1967 c 32 § 37; 1963 c 169 § 11.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.29.330 Suspension for nonpayment of judgments. The department upon receipt of the certificates provided for by RCW 46.29.310, on a form provided by the department, shall forthwith suspend the license and any nonresident's driving privilege of any person against whom such judgment was rendered, except as otherwise provided in this chapter. [1990 c 250 § 52; 1969 ex.s. c 44 § 3; 1967 c 32 § 40; 1963 c 169 § 33.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.29.430 Additional proof required—Suspension or revocation for failure to give proof. If a person required to give proof of financial responsibility under RCW 46.29.420 fails to give such proof within sixty days after the department has sent notice as hereinbefore provided, the department shall suspend, or continue in effect any existing suspension or revocation of, the license or any nonresident's driving privilege of the person. [1990 c 250 § 53; 1987 c 371 § 1; 1967 c 32 § 46; 1963 c 169 § 43.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.29.610 Surrender of license—Penalty. (1) Any person whose license shall have been suspended under any provision of this chapter, or whose policy of insurance or bond, when required under this chapter, shall have been canceled or terminated, shall immediately return the license to the department.

(2) Any person willfully failing to return a license as required in subsection (1) of this section is guilty of a misdemeanor. [1990 c 250 § 54; 1963 c 169 § 61.]

Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.

Severability—1990 c 250: See note following RCW 46.16.301.

46.29.625 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 46.30

MANDATORY LIABILITY INSURANCE

Sections

- 46.30.020 Liability insurance or other financial responsibility required—Violations—Exceptions.
- 46.30.040 Providing false evidence of financial responsibility—Penalty.

46.30.020 Liability insurance or other financial responsibility required—Violations—Exceptions.

(1)(a) No person may operate a motor vehicle subject to registration under chapter 46.16 RCW in this state unless the person is insured under a motor vehicle liability policy with liability limits of at least the amounts provided in RCW 46.29.090, is self-insured as provided in RCW 46.29.630, is covered by a certificate of deposit in conformance with RCW 46.29.550, or is covered by a liability bond of at least the amounts provided in RCW 46.29.090. Written proof of financial responsibility for motor vehicle operation must be provided on the request of a law enforcement officer in the format specified under RCW 46.30.030.

(b) A person who drives a motor vehicle that is required to be registered in another state that requires drivers and owners of vehicles in that state to maintain insurance or financial responsibility shall, when requested by a law enforcement officer, provide evidence of financial responsibility or insurance as is required by the laws of the state in which the vehicle is registered.

(c) When asked to do so by a law enforcement officer, failure to display an insurance identification card as specified under RCW 46.30.030 creates a presumption that the person does not have motor vehicle insurance.

(d) Failure to provide proof of motor vehicle insurance is a traffic infraction and is subject to penalties as set by the supreme court under RCW 46.63.110 or community service.

(2) If a person cited for a violation of subsection (1) of this section appears in person before the court and provides written evidence that at the time the person was cited, he or she was in compliance with the financial responsibility requirements of subsection (1) of this section, the citation shall be dismissed. In lieu of personal appearance, a person cited for a violation of subsection (1) of this section may, before the date scheduled for the person's appearance before the court, submit by mail to the court written evidence that at the time the person was cited, he or she was in compliance with the financial

responsibility requirements of subsection (1) of this section, in which case the citation shall be dismissed without cost, except that the court may assess court administrative costs of twenty-five dollars at the time of dismissal.

(3) The provisions of this chapter shall not govern:

(a) The operation of a motor vehicle registered under RCW 46.16.305(1), governed by RCW 46.16.020, or registered with the Washington utilities and transportation commission as common or contract carriers; or

(b) The operation of a motorcycle as defined in RCW 46.04.330, a motor-driven cycle as defined in RCW 46.04.332, or a moped as defined in RCW 46.04.304.

(4) RCW 46.29.490 shall not be deemed to govern all motor vehicle liability policies required by this chapter but only those certified for the purposes stated in chapter 46.29 RCW. [1991 1st sp.s. c 25 § 1; 1991 c 339 § 24; 1989 c 353 § 2.]

Notice of liability insurance requirement: RCW 46.16.212.

46.30.040 Providing false evidence of financial responsibility—Penalty.

Any person who knowingly provides false evidence of financial responsibility to a law enforcement officer or to a court, including an expired or canceled insurance policy, bond, or certificate of deposit is guilty of a misdemeanor. [1991 1st sp.s. c 25 § 2; 1989 c 353 § 4.]

Chapter 46.37

VEHICLE LIGHTING AND OTHER EQUIPMENT

Sections

- 46.37.193 Signs on buses.
- 46.37.195 Sale of emergency vehicle lighting equipment restricted.
- 46.37.420 Tires—Restrictions.
- 46.37.425 Tires—Unsafe—State patrol's authority—Penalty.
- 46.37.430 Safety glazing materials—Application of sunscreening or coloring material.
- 46.37.435 Sunscreening, unlawful installation, penalty.
- 46.37.480 Television viewers—Earphones.
- 46.37.530 Motorcycles, motor-driven cycles, or mopeds—Helmets, other equipment—Children—Rules.
- 46.37.535 Motorcycles, motor-driven cycles, or mopeds—Helmet requirements when rented.
- 46.37.620 School buses—Crossing arms.

46.37.193 Signs on buses. Every school bus and private carrier bus, in addition to any other equipment or distinctive markings required by this chapter, shall bear upon the front and rear thereof, above the windows thereof, plainly visible signs containing only the words "school bus" on a school bus and only the words "private carrier bus" on a private carrier bus in letters not less than eight inches in height, and in addition shall be equipped with visual signals meeting the requirements of RCW 46.37.190. [1990 c 241 § 10.]

46.37.195 Sale of emergency vehicle lighting equipment restricted. A public agency shall not sell or give emergency vehicle lighting equipment or other equipment to a person who may not lawfully operate the

lighting equipment or other equipment on the public streets and highways. [1990 c 94 § 2.]

Legislative finding—1990 c 94: "The legislature declares that public agencies should not engage in activity that leads or abets a person to engage in conduct that is not lawful. The legislature finds that some public agencies sell emergency vehicle lighting equipment at public auctions to persons who may not lawfully use the equipment. The legislature further finds that this practice misleads well-intentioned citizens and also benefits malevolent individuals." [1990 c 94 § 1.]

46.37.420 Tires—Restrictions. (1) It is unlawful to operate a vehicle upon the public highways of this state unless it is completely equipped with pneumatic rubber tires except vehicles equipped with temporary-use spare tires that meet federal standards that are installed and used in accordance with the manufacturer's instructions.

(2) No tire on a vehicle moved on a highway may have on its periphery any block, flange, cleat, or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it is permissible to use farm machinery with tires having protuberances that will not injure the highway, and except also that it is permissible to use tire chains or metal studs imbedded within the tire of reasonable proportions and of a type conforming to rules adopted by the state patrol, upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid. It is unlawful to use metal studs imbedded within the tire between April 1st and November 1st. The state department of transportation may, from time to time, determine additional periods in which the use of tires with metal studs imbedded therein is lawful.

(3) The state department of transportation and local authorities in their respective jurisdictions may issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of the movable tracks or farm tractors or other farm machinery, the operation of which upon a highway would otherwise be prohibited under this section.

(4) Tires with metal studs imbedded therein may be used between November 1st and April 1st upon school buses and fire department vehicles, any law or regulation to the contrary notwithstanding. [1990 c 105 § 1; 1987 c 330 § 721; 1986 c 113 § 4; 1984 c 7 § 50; 1971 ex.s. c 32 § 1; 1969 ex.s. c 7 § 1; 1961 c 12 § 46.37.420. Prior: 1955 c 269 § 42; prior: (i) 1937 c 189 § 41; RRS § 6360-41; RCW 46.36.100. (ii) 1937 c 189 § 42; RRS § 6360-42; RCW 46.36.120; 1929 c 180 § 7; 1927 c 309 § 46; RRS § 6362-46.]

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

Severability—1984 c 7: See note following RCW 47.01.141.

Dangerous road conditions requiring special tires, chains, metal studs: RCW 47.36.250.

Motorcycles and motor-driven cycles—Additional requirements and limitations: RCW 46.37.539.

46.37.425 Tires—Unsafe—State patrol's authority—Penalty. No person shall drive or move or

cause to be driven or moved any vehicle, the tires of which have contact with the driving surface of the road, subject to registration in this state, upon the public highways of this state unless such vehicle is equipped with tires in safe operating condition in accordance with requirements established by this section or by the state patrol.

The state patrol shall promulgate rules and regulations setting forth requirements of safe operating condition of tires capable of being employed by a law enforcement officer by visual inspection of tires mounted on vehicles including visual comparison with simple measuring gauges. These rules shall include effects of tread wear and depth of tread.

A tire shall be considered unsafe if it has:

(1) Any ply or cord exposed either to the naked eye or when cuts or abrasions on the tire are probed; or

(2) Any bump, bulge, or knot, affecting the tire structure; or

(3) Any break repaired with a boot; or

(4) A tread depth of less than 2/32 of an inch measured in any two major tread grooves at three locations equally spaced around the circumference of the tire, or for those tires with tread wear indicators, a tire shall be considered unsafe if it is worn to the point that the tread wear indicators contact the road in any two major tread grooves at three locations equally spaced around the circumference of the tire; or

(5) A legend which indicates the tire is not intended for use on public highways such as, "not for highway use" or "for racing purposes only"; or

(6) Such condition as may be reasonably demonstrated to render it unsafe; or

(7) If not matched in tire size designation, construction, and profile to the other tire and/or tires on the same axle, except for temporary-use spare tires that meet federal standards that are installed and used in accordance with the manufacturer's instructions.

No person, firm, or corporation shall sell any vehicle for use on the public highways of this state unless the vehicle is equipped with tires that are in compliance with the provisions of this section. If the tires are found to be in violation of the provisions of this section, the person, firm, or corporation selling the vehicle shall cause such tires to be removed from the vehicle and shall equip the vehicle with tires that are in compliance with the provisions of this section.

It is a traffic infraction for any person to operate a vehicle on the public highways of this state, or to sell a vehicle for use on the public highways of this state, which is equipped with a tire or tires in violation of the provisions of this section or the rules and regulations promulgated by the state patrol hereunder: **PROVIDED, HOWEVER,** That if the violation relates to items (1) to (7) inclusive of this section then the condition or defect must be such that it can be detected by a visual inspection of tires mounted on vehicles, including visual comparison with simple measuring gauges. [1990 c 105 § 2; 1987 c 330 § 722; 1979 ex.s. c 136 § 73; 1977 ex.s. c 355 § 37; 1971 c 77 § 3.]

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

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1971 c 77: "The provisions of RCW 46.37.425 shall have an effective date of January 1, 1972, but the state commission on equipment shall have the authority to proceed with the promulgation of the rules and regulations provided for in RCW 46.37.425 so the rules and regulations may have an effective date of January 1, 1972." [1971 c 77 § 4.]

46.37.430 Safety glazing materials—Application of sunscreening or coloring material. (1) No person may sell any new motor vehicle as specified in this title, nor may any new motor vehicle as specified in this title be registered unless such vehicle is equipped with safety glazing material of a type that meets or exceeds federal standards, or if there are none, standards approved by the Washington state patrol. The foregoing provisions apply to all passenger-type motor vehicles, including passenger buses and school buses, but in respect to trucks, including truck tractors, the requirements as to safety glazing material apply to all glazing material used in doors, windows, and windshields in the drivers' compartments of such vehicles except as provided by subsection (4) of this section.

(2) The term "safety glazing materials" means glazing materials so constructed, treated, or combined with other materials as to reduce substantially, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they may be cracked or broken.

(3) The director of licensing shall not register any motor vehicle which is subject to the provisions of this section unless it is equipped with an approved type of safety glazing material, and he or she shall suspend the registration of any motor vehicle so subject to this section which the director finds is not so equipped until it is made to conform to the requirements of this section.

(4) No person may sell or offer for sale, nor may any person operate a motor vehicle registered in this state which is equipped with, any camper manufactured after May 23, 1969, unless such camper is equipped with safety glazing material of a type conforming to rules adopted by the state patrol wherever glazing materials are used in outside windows and doors.

(5) No film sunscreening or coloring material that reduces light transmittance to any degree may be applied to the surface of the safety glazing material in a motor vehicle unless it meets the following standards for such material:

(a) The maximum level of film sunscreening material to be applied to any window, except the windshield, shall have a total reflectance of thirty-five percent or less, plus or minus three percent, and a light transmission of thirty-five percent or more, plus or minus three percent, when measured against clear glass and where the vehicle is equipped with outside rearview mirrors on both the right and left. Installation of more than a single sheet of film sunscreening material to any window is prohibited.

The same maximum levels of film sunscreening material may be applied to windows to the immediate right and left of the driver on limousines and passenger buses used to transport persons for compensation and vehicles identified by the manufacturer as multi-use, multipurpose, or other similar designation. All windows to the rear of the driver on such vehicles may have film sunscreening material applied that has less than thirty-five percent light transmittance, if the light reflectance is thirty-five percent or less and the vehicle is equipped with outside rearview mirrors on both the right and left. Manufacturers of film sunscreening material shall provide a label to affix to the vehicle indicating the percentage light transmittance and light reflectance of the film and it shall be affixed by the installer to the area immediately below the federal vehicle identification number sticker on the driver's side striker post. All vehicles equipped with film sunscreening material are required, on and after January 1, 1991, to meet the labeling requirements in this section. The label shall meet standards adopted by the state patrol.

(b) A greater degree of light reduction is permitted on all windows and the top six inches of windshields of a vehicle operated by or carrying as a passenger a person who possesses a written verification from a licensed physician that the operator or passenger must be protected from exposure to sunlight for physical or medical reasons.

(c) Windshield application. A greater degree of light reduction is permitted on the top six-inch area of a vehicle's windshield. Clear film sunscreening material that reduces or eliminates ultraviolet light may be applied to windshields.

(d) When film sunscreening material is applied to any window except the windshield, outside mirrors on both the left and right sides shall be located so as to reflect to the driver a view of the roadway, through each mirror, a distance of at least two hundred feet to the rear of the vehicle.

(e) The following types of film sunscreening material are not permitted:

- (i) Mirror finish products;
- (ii) Red, gold, yellow, or black material; or
- (iii) Film sunscreening material that is in liquid pre-application form and brushed or sprayed on.

Nothing in this section prohibits the use of shaded or heat-absorbing safety glazing material in which the shading or heat-absorbing characteristics have been applied at the time of manufacture of the safety glazing material and which meet federal standards and the standards of the state patrol for such safety glazing materials.

(6) It is a traffic infraction for any person to operate a vehicle for use on the public highways of this state, if the vehicle is equipped with film sunscreening or coloring material in violation of this section.

(7) Owners of vehicles with film sunscreening material applied to windows to the rear of the driver, prior to June 7, 1990, must comply with the requirements of this section and RCW 46.37.435 by July 1, 1993. [1990 c 95 § 1; 1989 c 210 § 1; 1987 c 330 § 723; 1986 c 113 § 5;

1985 c 304 § 1; 1979 c 158 § 157; 1969 ex.s. c 281 § 47; 1961 c 12 § 46.37.430. Prior: 1955 c 269 § 43; prior: 1947 c 220 § 1; 1937 c 189 § 40; Rem. Supp. 1947 § 6360-40; RCW 46.36.090.]

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

46.37.435 Sunscreening, unlawful installation, penalty. From June 7, 1990, a person who installs safety glazing or film sunscreening material in violation of RCW 46.37.430 is guilty of unlawful installation of safety glazing or film sunscreening materials. Unlawful installation is a misdemeanor. [1990 c 95 § 2.]

46.37.480 Television viewers—Earphones. (1) No person shall drive any motor vehicle equipped with any television viewer, screen, or other means of visually receiving a television broadcast which is located in the motor vehicle at any point forward of the back of the driver's seat, or which is visible to the driver while operating the motor vehicle.

(2) No person shall operate any motor vehicle on a public highway while wearing any headset or earphones connected to any electronic device capable of receiving a radio broadcast or playing a sound recording for the purpose of transmitting a sound to the human auditory senses and which headset or earphones muffle or exclude other sounds. This subsection does not apply to students and instructors participating in a Washington state motorcycle safety program.

(3) This section does not apply to authorized emergency vehicles or to motorcyclists wearing a helmet with built-in headsets or earphones as approved by the Washington state patrol. [1991 c 95 § 1; 1988 c 227 § 6; 1987 c 176 § 1; 1977 ex.s. c 355 § 40; 1961 c 12 § 46.37.480. Prior: 1949 c 196 § 11; Rem. Supp. 1949 § 6360-98d. Formerly RCW 46.36.150.]

Severability—1988 c 227: See RCW 46.81A.900.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.530 Motorcycles, motor-driven cycles, or mopeds—Helmets, other equipment—Children—Rules. (1) It is unlawful:

(a) For any person to operate a motorcycle or motor-driven cycle not equipped with mirrors on the left and right sides of the motorcycle which shall be so located as to give the driver a complete view of the highway for a distance of at least two hundred feet to the rear of the motorcycle or motor-driven cycle: PROVIDED, That mirrors shall not be required on any motorcycle or motor-driven cycle over twenty-five years old originally manufactured without mirrors and which has been restored to its original condition and which is being ridden to or from or otherwise in conjunction with an antique or classic motorcycle contest, show, or other such assemblage: PROVIDED FURTHER, That no mirror is required on any motorcycle manufactured prior to January 1, 1931;

(b) For any person to operate a motorcycle or motor-driven cycle which does not have a windshield unless

wearing glasses, goggles, or a face shield of a type conforming to rules adopted by the state patrol;

(c) For any person to operate or ride upon a motorcycle, motor-driven cycle, or moped on a state highway, county road, or city street unless wearing upon his or her head a protective helmet of a type conforming to rules adopted by the state patrol except when the vehicle is an antique motor-driven cycle or automobile that is licensed as a motorcycle or when the vehicle is equipped with seat belts and roll bars approved by the state patrol. The helmet must be equipped with either a neck or chin strap which shall be fastened securely while the motorcycle or motor-driven cycle is in motion;

(d) For any person to transport a child under the age of five on a motorcycle or motor-driven cycle;

(e) For any person to sell or offer for sale a motorcycle helmet which does not meet the requirements established by the state patrol.

(2) The state patrol is hereby authorized and empowered to adopt and amend rules, pursuant to the administrative procedure act, concerning the standards and procedures for conformance of rules adopted for glasses, goggles, face shields, and protective helmets. [1990 c 270 § 7. Prior: 1987 c 454 § 1; 1987 c 330 § 732; 1986 c 113 § 8; 1982 c 77 § 7; 1977 ex.s. c 355 § 55; 1971 ex.s. c 150 § 1; 1969 c 42 § 1; 1967 c 232 § 4.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Short title—1990 c 270: See RCW 43.70.440.

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

Severability—1982 c 77: See note following RCW 46.20.500.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Maximum height for handlebars: RCW 46.61.611.

Riding on motorcycles: RCW 46.61.610.

46.37.535 Motorcycles, motor-driven cycles, or mopeds—Helmet requirements when rented. It is unlawful for any person to rent out motorcycles, motor-driven cycles, or mopeds unless the person also has on hand for rent helmets of a type conforming to rules adopted by the state patrol.

It shall be unlawful for any person to rent a motorcycle, motor-driven cycle, or moped unless the person has in his or her possession a helmet of a type approved by the state patrol, regardless of from whom the helmet is obtained. [1990 c 270 § 8; 1987 c 330 § 733; 1986 c 113 § 9; 1977 ex.s. c 355 § 56; 1967 c 232 § 10.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Short title—1990 c 270: See RCW 43.70.440.

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

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

License requirement for person renting motorcycle: RCW 46.20.220.

46.37.620 School buses—Crossing arms. Effective September 1, 1992, every school bus shall, in addition to any other equipment required by this chapter, be equipped with a crossing arm mounted to the bus that, when extended, will require students who are crossing in

front of the bus to walk more than five feet from the front of the bus. [1991 c 166 § 1.]

Chapter 46.44 SIZE, WEIGHT, LOAD

Sections

46.44.015	Tow truck exemptions.
46.44.030	Maximum lengths.
46.44.034	Maximum lengths—Front and rear protrusions.
46.44.037	Combination of units—Lawful operations.
46.44.0941	Special permits for oversize or overweight movements—Fees.
46.44.095	Annual additional tonnage permits—Fees.
46.44.105	Enforcement procedures—Penalties—Rules.

46.44.015 Tow truck exemptions. The limitations of RCW 46.44.010, 46.44.020, 46.44.030, 46.44.034, 46.44.041, 46.44.042, 46.44.050, and 46.44.080 do not apply to the movement of a tow truck, as defined in RCW 46.55.010, if the tow truck is performing the initial tow truck service, as defined in RCW 46.55.010, regardless of the destination, for a vehicle disabled on the public streets and highways of this state: PROVIDED, That an overweight permit has been obtained by the tow truck operator with such permit being available on a twenty-four hour basis by telephone. [1991 c 276 § 1.]

46.44.030 Maximum lengths. It is unlawful for any person to operate upon the public highways of this state any vehicle having an overall length, with or without load, in excess of forty feet. This restriction does not apply to (1) a municipal transit vehicle or (2) an articulated auto stage with an overall length not to exceed sixty-one feet.

It is unlawful for any person to operate on the highways of this state any combination of vehicles that contains a vehicle in excess of forty-eight feet, with or without load.

It is unlawful for any person to operate upon the public highways of this state any combination consisting of a tractor and semitrailer that has a semitrailer length in excess of forty-eight feet or a combination consisting of a tractor and two trailers in which the combined length of the trailers exceeds sixty feet, with or without load.

It is unlawful for any person to operate on the highways of this state any combination consisting of a truck and trailer with an overall length, with or without load, in excess of seventy-five feet. However, a combination of vehicles transporting automobiles or boats may have a front overhang of three feet and a rear overhang of four feet beyond this allowed length.

These length limitations do not apply to vehicles transporting poles, pipe, machinery, or other objects of a structural nature that cannot be dismembered and operated by a public utility when required for emergency repair of public service facilities or properties, but in respect to night transportation every such vehicle and load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of any projecting load to clearly mark the dimensions of the load.

The length limitations described in this section are exclusive of safety and energy conservation devices, such as mud flaps and splash and spray suppressant devices, refrigeration units or air compressors, and other devices that the department determines to be necessary for safe and efficient operation of commercial vehicles. No device excluded under this paragraph from the limitations of this section may have, by its design or use, the capability to carry cargo. [1991 c 113 § 1; 1990 c 28 § 1; 1985 c 351 § 1; 1984 c 104 § 1; 1983 c 278 § 2; 1979 ex.s. c 113 § 4; 1977 ex.s. c 64 § 1; 1975-'76 2nd ex.s. c 53 § 1; 1974 ex.s. c 76 § 2; 1971 ex.s. c 248 § 2; 1967 ex.s. c 145 § 61; 1963 ex.s. c 3 § 52; 1961 ex.s. c 21 § 36; 1961 c 12 § 46.44.030. Prior: 1959 c 319 § 25; 1957 c 273 § 14; 1951 c 269 § 22; prior: 1949 c 221 § 1, part; 1947 c 200 § 5, part; 1941 c 116 § 1, part; 1937 c 189 § 49, part; Rem. Supp. 1949 § 6360-49, part.]

Severability—1967 ex.s. c 145: See RCW 47.98.043.

46.44.034 Maximum lengths—Front and rear protrusions. (1) The load, or any portion of any vehicle, operated alone upon the public highway of this state, or the load, or any portion of the front vehicle of a combination of vehicles, shall not extend more than three feet beyond the front wheels of such vehicle, or the front bumper, if equipped with front bumper.

(2) No vehicle shall be operated upon the public highways with any part of the permanent structure or load extending in excess of fifteen feet beyond the center of the last axle of such vehicle. This subsection does not apply to "specialized equipment" designated under 49 U.S.C. [Sec.] 2311 that is operated on the interstate highway system, those designated portions of the federal-aid primary system, and routes constituting reasonable access from such highways to terminals and facilities for food, fuel, repairs, and rest. [1991 c 143 § 1; 1961 c 12 § 46.44.034. Prior: 1957 c 273 § 15; 1951 c 269 § 24; prior: 1949 c 221 § 1, part; 1947 c 200 § 5, part; 1941 c 116 § 1, part; 1937 c 189 § 49, part; Rem. Supp. 1949 § 6360-49, part.]

46.44.037 Combination of units—Lawful operations. Notwithstanding the provisions of RCW 46.44.036 and subject to such rules and regulations governing their operation as may be adopted by the state department of transportation, operation of the following combinations is lawful:

(1) A combination consisting of a truck tractor, a semitrailer, and another semitrailer or a full trailer. In this combination a converter gear used to convert a semitrailer into a full trailer shall be considered to be a part of the full trailer and not a separate vehicle. A converter gear being pulled without load and not used to convert a semitrailer into a full trailer may be substituted in lieu of a full trailer or a semitrailer in any lawful combination;

(2) A combination not exceeding seventy-five feet in overall length consisting of four trucks or truck tractors used in driveaway service where three of the vehicles are towed by the fourth in triple saddle mount position;

(3) A combination consisting of a truck tractor carrying a freight compartment no longer than eight feet, a semitrailer, and another semitrailer or full trailer that meets the legal length requirement for a truck and trailer combination set forth in RCW 46.44.030. [1991 c 143 § 2; 1985 c 351 § 2; 1984 c 7 § 53; 1979 ex.s. c 149 § 3; 1975-'76 2nd ex.s. c 64 § 9; 1965 ex.s. c 170 § 37; 1963 ex.s. c 3 § 53; 1961 c 12 § 46.44.037. Prior: 1957 c 273 § 16; 1955 c 384 § 3.]

Severability—1984 c 7: See note following RCW 47.01.141.
Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.0941 Special permits for oversize or overweight movements—Fees. The following fees, in addition to the regular license and tonnage fees, shall be paid for all movements under special permit made upon state highways. All funds collected, except the amount retained by authorized agents of the department as provided in RCW 46.44.096, shall be forwarded to the state treasury and shall be deposited in the motor vehicle fund:

- All overlegal loads, except overweight, single trip \$ 10.00
- Continuous operation of overlegal loads having either overwidth or overheight features only, for a period not to exceed thirty days \$ 20.00
- Continuous operations of overlegal loads having overlength features only, for a period not to exceed thirty days \$ 10.00
- Continuous operation of a combination of vehicles having one trailing unit that exceeds forty-eight feet and is not more than fifty-six feet in length, for a period of one year \$100.00
- Continuous operation of a combination of vehicles having two trailing units which together exceed sixty feet and are not more than sixty-eight feet in length, for a period of one year \$100.00
- Continuous operation of a three-axle fixed load vehicle having less than 65,000 pounds gross weight, for a period not to exceed thirty days \$ 70.00
- Continuous operation of overlegal loads having nonreducible features not to exceed eighty-five feet in length and fourteen feet in width, for a period of one year \$150.00
- Continuous operation of farm implements under a permit issued as authorized by RCW 46.44.140 by:
 - (1) Farmers in the course of farming activities, for any three-month period \$ 10.00
 - (2) Farmers in the course of farming activities, for a period not to exceed one year ... \$ 25.00
 - (3) Persons engaged in the business of the sale, repair, or maintenance of such farm implements, for any three-month period \$ 25.00

(4) Persons engaged in the business of the sale, repair, or maintenance of such farm implements, for a period not to exceed one year \$100.00

Overweight Fee Schedule

Weight over total registered gross weight plus additional gross weight purchased under RCW 46.44.095 or 46.44.047, or any other statute authorizing the state department of transportation to issue annual overweight permits.	Fee per mile on state highways
1- 5,999 pounds	\$.07
6,000-11,999 pounds	\$.14
12,000-17,999 pounds	\$.21
18,000-23,999 pounds	\$.35
24,000-29,999 pounds	\$.49
30,000-35,999 pounds	\$.63
36,000-41,999 pounds	\$.84
42,000-47,999 pounds	\$ 1.05
48,000-53,999 pounds	\$ 1.26
54,000-59,999 pounds	\$ 1.47
60,000-65,999 pounds	\$ 1.68
66,000-71,999 pounds	\$ 2.03
72,000-79,999 pounds	\$ 2.38
80,000 pounds or more	\$ 2.80

PROVIDED: (a) The minimum fee for any overweight permit shall be \$ 14.00, (b) the fee for issuance of a duplicate permit shall be \$ 14.00, (c) when computing overweight fees that result in an amount less than even dollars the fee shall be carried to the next full dollar if fifty cents or over and shall be reduced to the next full dollar if forty-nine cents or under. [1990 c 42 § 107; 1989 c 398 § 1; 1985 c 351 § 5; 1983 c 278 § 3; 1979 ex.s. c 113 § 5; 1975-'76 2nd ex.s. c 64 § 16; 1975 1st ex.s. c 168 § 2; 1973 1st ex.s. c 1 § 3; 1971 ex.s. c 248 § 3; 1967 c 174 § 8; 1965 c 137 § 2.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

Effective date—1975 1st ex.s. c 168: See note following RCW 46.44.091.

46.44.095 Annual additional tonnage permits—Fees. When a combination of vehicles has been lawfully licensed to a total gross weight of eighty thousand pounds and when a three or more axle single unit vehicle has been lawfully licensed to a total gross weight of forty thousand pounds pursuant to provisions of RCW 46.44-.041, a permit for additional gross weight may be issued by the department of transportation upon the payment of fifty-two dollars and fifty cents per year for each one thousand pounds or fraction thereof of such additional gross weight: PROVIDED, That the tire limits specified in RCW 46.44.042 shall apply, and the gross weight on any single axle shall not exceed twenty thousand pounds, and the gross load on any group of axles shall not exceed

the limits set forth in RCW 46.44.041: PROVIDED FURTHER, That within the tire limits of RCW 46.44.042, and notwithstanding RCW 46.44.041 and 46.44.091, a permit for an additional six thousand pounds may be purchased for the rear axles of a two-axle garbage truck or eight thousand pounds for the tandem axle of a three axle garbage truck at a rate not to exceed forty-two dollars per thousand. Such additional weight in the case of garbage trucks shall not be valid or permitted on any part of the federal interstate highway system.

The annual additional tonnage permits provided for in this section shall be issued upon such terms and conditions as may be prescribed by the department pursuant to general rules adopted by the transportation commission. Such permits shall entitle the permittee to carry such additional load in an amount and upon highways or sections of highways as may be determined by the department of transportation to be capable of withstanding increased gross load without undue injury to the highway: PROVIDED, That the permits are not valid on any highway where the use of such permits would deprive this state of federal funds for highway purposes.

For those vehicles registered under chapter 46.87 RCW, the annual additional tonnage permits provided for in this section may be issued to coincide with the registration year of the base jurisdiction. For those vehicles registered under chapter 46.16 RCW and whose registration has staggered renewal dates, the annual additional tonnage permits may be issued to coincide with the expiration date of the registration. The permits may be purchased at any time, and if they are purchased for less than a full year, the fee shall be one-twelfth of the full fee multiplied by the number of months, including any fraction thereof, covered by the permit. When the department issues a duplicate permit to replace a lost or destroyed permit and where the department transfers a permit from one vehicle to another a fee of fourteen dollars shall be charged for each duplicate issued or each transfer. The department of transportation shall issue permits on a temporary basis for periods not less than five days at two dollars and eighty cents per day for each two thousands pounds or fraction thereof.

The fees levied in RCW 46.44.0941 and this section shall not apply to any vehicles owned and operated by the state of Washington, any county within the state, or any city or town or metropolitan municipal corporation within the state, or by the federal government.

In the case of fleets prorating license fees under the provisions of chapter 46.87 RCW, the fees provided for in this section shall be computed by the department of transportation by applying the proportion of the Washington mileage of the fleet in question to the total mileage of the fleet as reported pursuant to chapter 46.87 RCW to the fees that would be required to purchase the additional weight allowance for all eligible vehicles or combinations of vehicles for which the extra weight allowance is requested.

When computing fees that result in an amount other than full dollars, the fee shall be increased to the next full dollar if fifty cents or over and shall be reduced to

the next full dollar if forty-nine cents or under. The minimum fee for any prorated tonnage permit issued under this section shall be thirty-five dollars. [1990 c 42 § 108; 1989 c 398 § 3; 1988 c 55 § 1; 1983 c 68 § 2; 1979 c 158 § 159; 1977 ex.s. c 151 § 33; 1975-'76 2nd ex.s. c 64 § 17; 1974 ex.s. c 76 § 1; 1973 1st ex.s. c 150 § 3; 1969 ex.s. c 281 § 55; 1967 ex.s. c 94 § 15; 1967 c 32 § 51; 1965 ex.s. c 170 § 38; 1961 ex.s. c 7 § 15; 1961 c 12 § 46.44.095. Prior: 1959 c 319 § 31; 1957 c 273 § 18; 1955 c 185 § 1; 1953 c 254 § 13; 1951 c 269 § 39; prior: 1949 c 221 § 3, part; 1947 c 200 § 7, part; 1945 c 177 § 1, part; 1937 c 189 § 55, part; Rem. Supp. 1949 § 6360-55, part.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Federal requirements—Severability—1977 ex.s. c 151: See RCW 47.98.070 and 47.98.080.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.105 Enforcement procedures—Penalties—Rules. (1) Violation of any of the provisions of RCW 46.44.041, 46.44.042, 46.44.047, 46.44.090, 46.44.091, and 46.44.095, or failure to obtain a permit as provided by RCW 46.44.090 and 46.44.095, or misrepresentation of the size or weight of any load or failure to follow the requirements and conditions of a permit issued hereunder is a traffic infraction, and upon the first finding thereof shall be assessed a basic penalty of not less than fifty dollars; and upon a second finding thereof shall be assessed a basic penalty of not less than seventy-five dollars; and upon a third or subsequent finding shall be assessed a basic penalty of not less than one hundred dollars.

(2) In addition to the penalties imposed in subsection (1) of this section, any person violating RCW 46.44.041, 46.44.042, 46.44.047, 46.44.090, 46.44.091, or 46.44.095 shall be assessed three cents for each pound of excess weight. Upon a first violation in any calendar year, the court may suspend the penalty for five hundred pounds of excess weight for each axle on any vehicle or combination of vehicles, not to exceed a two thousand pound suspension. In no case may the basic penalty assessed in subsection (1) of this section be suspended.

(3) Whenever any vehicle or combination of vehicles is involved in two violations of RCW 46.44.041, 46.44.042, 46.44.047, 46.44.090, 46.44.091, or 46.44.095 during any twelve-month period, the court may suspend the certificate of license registration of the vehicle or combination of vehicles for not less than thirty days. Upon a third or succeeding violation in any twelve-month period, the court shall suspend the certificate of license registration for not less than thirty days. Whenever the certificate of license registration is suspended, the court shall secure such certificate and immediately forward the same to the director with information concerning the suspension.

(4) Any person found to have violated any posted limitations of a highway or section of highway shall be assessed a monetary penalty of not less than one hundred and fifty dollars, and the court shall in addition

thereto upon second violation within a twelve-month period involving the same power unit, suspend the certificate of license registration for not less than thirty days.

(5) Any police officer is authorized to require the driver of any vehicle or combination of vehicles to stop and submit to a weighing either by means of a portable or stationary scale and may require that the vehicle be driven to the nearest public scale. Whenever a police officer, upon weighing a vehicle and load, determines that the weight is unlawful, the officer may require the driver to stop the vehicle in a suitable location and remain standing until such portion of the load is removed as may be necessary to reduce the gross weight of the vehicle to the limit permitted by law.

Any vehicle whose driver or owner represents that the vehicle is disabled or otherwise unable to proceed to a weighing location shall have its load sealed or otherwise marked by any police officer. The owner or driver shall be directed that upon completion of repairs, the vehicle shall submit to weighing with the load and markings and/or seal intact and undisturbed. Failure to report for weighing, appearing for weighing with the seal broken or the markings disturbed, or removal of any cargo prior to weighing is unlawful. Any person so convicted shall be fined five hundred dollars, and in addition the certificate of license registration shall be suspended for not less than thirty days.

(6) Any other provision of law to the contrary notwithstanding, district courts having venue have concurrent jurisdiction with the superior courts for the imposition of any penalties authorized under this section.

(7) For the purpose of determining additional penalties as provided by subsection (2) of this section, "excess weight" means the poundage in excess of the maximum gross weight prescribed by RCW 46.44.041 and 46.44.042 plus the weights allowed by RCW 46.44.047, 46.44.091, and 46.44.095.

(8) The penalties provided in subsections (1) and (2) of this section shall be remitted as provided in chapter 3.62 RCW or RCW 10.82.070. For the purpose of computing the basic penalties and additional penalties to be imposed under the provisions of subsections (1) and (2) of this section the convictions shall be on the same vehicle or combination of vehicles within a twelve-month period under the same ownership.

(9) Any state patrol officer or any weight control officer who finds any person operating a vehicle or a combination of vehicles in violation of the conditions of a permit issued under RCW 46.44.047, 46.44.090, and 46.44.095 may confiscate the permit and forward it to the state department of transportation which may return it to the permittee or revoke, cancel, or suspend it without refund. The department of transportation shall keep a record of all action taken upon permits so confiscated, and if a permit is returned to the permittee the action taken by the department of transportation shall be endorsed thereon. Any permittee whose permit is suspended or revoked may upon request receive a hearing

before the department of transportation or person designated by that department. After the hearing the department of transportation may reinstate any permit or revise its previous action.

Every permit issued as provided for in this chapter shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any law enforcement officer or authorized agent of any authority granting such a permit.

Upon the third finding within a calendar year of a violation of the requirements and conditions of a permit issued under RCW 46.44.095 as now or hereafter amended, the permit shall be canceled, and the canceled permit shall be immediately transmitted by the court or the arresting officer to the department of transportation. The vehicle covered by the canceled permit is not eligible for a new permit for a period of thirty days.

(10) For the purposes of determining gross weights the actual scale weight taken by the arresting officer is prima facie evidence of the total gross weight.

(11) It is a traffic infraction to direct the loading of a vehicle with knowledge that it violates the requirements in RCW 46.44.041, 46.44.042, 46.44.047, 46.44.090, 46.44.091, or 46.44.095 and that it is to be operated on the public highways of this state.

(12) The chief of the state patrol, with the advice of the department, may adopt reasonable rules to aid in the enforcement of this section. [1990 c 217 § 1; 1985 c 351 § 6; 1984 c 258 § 327; 1984 c 7 § 58; 1979 ex.s. c 136 § 75; 1975-'76 2nd ex.s. c 64 § 23.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

Severability—1984 c 7: See note following RCW 47.01.141.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

Chapter 46.52

ACCIDENTS—REPORTS—ABANDONED VEHICLES

Sections	
46.52.020	Duty in case of injury to or death of person or damage to attended vehicle or other property—Penalty.
46.52.100	Record of traffic charges—Reports of court—District court venue—Driving under influence of liquor or drugs.
46.52.130	Abstract of driving record—Confidentiality—Fees—Penalty.

46.52.020 Duty in case of injury to or death of person or damage to attended vehicle or other property—Penalty. (1) A driver of any vehicle involved in an accident resulting in the injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to, and in every event remain at, the scene of such accident until he has fulfilled the requirements of subsection (3) of this section; every such stop

shall be made without obstructing traffic more than is necessary.

(2) The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person or damage to other property shall immediately stop such vehicle at the scene of such accident or as close thereto as possible and shall forthwith return to, and in any event shall remain at, the scene of such accident until he has fulfilled the requirements of subsection (3) of this section; every such stop shall be made without obstructing traffic more than is necessary.

(3) Unless otherwise provided in subsection (7) of this section the driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person or damage to other property shall give his name, address, insurance company, insurance policy number, and vehicle license number and shall exhibit his vehicle driver's license to any person struck or injured or the driver or any occupant of, or any person attending, any such vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying or the making of arrangements for the carrying of such person to a physician or hospital for medical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person or on his behalf. Under no circumstances shall the rendering of assistance or other compliance with the provisions of this subsection be evidence of the liability of any driver for such accident.

(4) Any driver covered by the provisions of subsection (1) of this section failing to stop or comply with any of the requirements of subsection (3) of this section under said circumstances shall be guilty of a class C felony and, upon conviction, be punished pursuant to RCW 9A.20.020: PROVIDED, That this provision shall not apply to any person injured or incapacitated by such accident to the extent of being physically incapable of complying herewith.

(5) Any driver covered by the provisions of subsection (2) of this section failing to stop or to comply with any of the requirements of subsection (3) of this section under said circumstances shall be guilty of a gross misdemeanor: PROVIDED, That this provision shall not apply to any person injured or incapacitated by such accident to the extent of being physically incapable of complying herewith.

(6) The license or permit to drive or any nonresident privilege to drive of any person convicted under this section or any local ordinance consisting of substantially the same language as this section of failure to stop and give information or render aid following an accident with any vehicle driven or attended by any person shall be revoked by the department.

(7) If none of the persons specified are in condition to receive the information to which they otherwise would be entitled under subsection (3) of this section, and no police officer is present, the driver of any vehicle involved in such accident after fulfilling all other requirements of subsections (1) and (3) of this section insofar

as possible on his part to be performed, shall forthwith report such accident to the nearest office of the duly authorized police authority and submit thereto the information specified in subsection (3) of this section. [1990 c 210 § 2; 1980 c 97 § 1; 1979 ex.s. c 136 § 80; 1975-'76 2nd ex.s. c 18 § 1. Prior: 1975 1st ex.s. c 210 § 1; 1975 c 62 § 14; 1967 c 32 § 53; 1961 c 12 § 46.52-.020; prior: 1937 c 189 § 134; RRS § 6360-134; 1927 c 309 § 50, part; RRS § 6362-50, part.]

Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.

Effective date—1980 c 97: "This 1980 act shall take effect on July 1, 1980." [1980 c 97 § 3.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability—1975 c 62: See note following RCW 36.75.010.

Arrest of person violating duty in case of injury to or death of person or damage to attended vehicle: RCW 10.31.100.

46.52.100 Record of traffic charges—Reports of court—District court venue—Driving under influence of liquor or drugs. Every district court, municipal court, and clerk of superior court shall keep or cause to be kept a record of every traffic complaint, traffic citation, notice of infraction, or other legal form of traffic charge deposited with or presented to the court or a traffic violations bureau, and shall keep a record of every official action by said court or its traffic violations bureau in reference thereto, including but not limited to a record of every conviction, forfeiture of bail, judgment of acquittal, finding that a traffic infraction has been committed, dismissal of a notice of infraction, and the amount of fine, forfeiture, or penalty resulting from every said traffic complaint, citation, or notice of infraction deposited with or presented to the district court, municipal court, superior court, or traffic violations bureau.

The Monday following the conviction, forfeiture of bail, or finding that a traffic infraction was committed for violation of any provisions of this chapter or other law regulating the operating of vehicles on highways, every said magistrate of the court or clerk of the court of record in which such conviction was had, bail was forfeited, or the finding made shall prepare and immediately forward to the director of licensing at Olympia an abstract of the record of said court covering the case, which abstract must be certified by the person so required to prepare the same to be true and correct. Report need not be made of any finding involving the illegal parking or standing of a vehicle.

Said abstract must be made upon a form furnished by the director and shall include the name and address of the party charged, the number, if any, of the party's driver's or chauffeur's license, the registration number of the vehicle involved, the nature of the offense, the date of hearing, the plea, the judgment, whether bail forfeited, whether the determination that a traffic infraction was committed was contested, and the amount of the fine, forfeiture, or penalty as the case may be.

Every court of record shall also forward a like report to the director upon the conviction of any person of

manslaughter or other felony in the commission of which a vehicle was used.

The failure of any such judicial officer to comply with any of the requirements of this section shall constitute misconduct in office and shall be grounds for removal therefrom.

The director shall keep all abstracts received hereunder at the director's office in Olympia and the same shall be open to public inspection during reasonable business hours.

Venue in all district courts shall be before one of the two nearest district judges in incorporated cities and towns nearest to the point the violation allegedly occurred: PROVIDED, That in counties with populations of one hundred twenty-five thousand or more such cases may be tried in the county seat at the request of the defendant.

It shall be the duty of the officer, prosecuting attorney, or city attorney signing the charge or information in any case involving a charge of driving under the influence of intoxicating liquor or any drug immediately to make request to the director for an abstract of convictions and forfeitures which the director shall furnish. [1991 c 363 § 123; 1987 c 3 § 18; 1985 c 302 § 6; 1983 c 2 § 12. Prior: 1979 ex.s. c 176 § 4; 1979 ex.s. c 136 § 81; 1979 c 158 § 163; 1967 c 32 § 60; 1961 c 12 § 46-.52.100; prior: 1955 c 393 § 2; 1949 c 196 § 15; 1937 c 189 § 142; Rem. Supp. 1949 § 6360-142.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

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

Severability—1987 c 3: See note following RCW 3.46.020.

Severability—1983 c 2: See note following RCW 18.71.030.

Severability—1979 ex.s. c 176: See note following RCW 46.61.502.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.52.130 Abstract of driving record—Confidentiality—Fees—Penalty. A certified abstract of the driving record shall be furnished only to the individual named in the abstract, an employer, the insurance carrier that has insurance in effect covering the employer or a prospective employer, the insurance carrier that has insurance in effect covering the named individual, the insurance carrier to which the named individual has applied, or an alcohol/drug assessment or treatment agency approved by the department of social and health services, to which the named individual has applied or been assigned for evaluation or treatment. City attorneys and county prosecuting attorneys may provide the driving record to alcohol/drug assessment or treatment agencies approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment. The director, upon proper request, shall furnish a certified abstract covering the period of not more than the last three years to insurance companies, and covering a period of not more than the last five years to state approved alcohol/drug assessment or treatment agencies. A certified abstract of the full driving record maintained

by the department shall be furnished to individuals and employers or prospective employers. The abstract, whenever possible, shall include an enumeration of motor vehicle accidents in which the person was driving; the total number of vehicles involved; whether the vehicles were legally parked or moving; whether the vehicles were occupied at the time of the accident; any reported convictions, forfeitures of bail, or findings that an infraction was committed based upon a violation of any motor vehicle law; and the status of the person's driving privilege in this state. The enumeration shall include any reports of failure to appear in response to a traffic citation or failure to respond to a notice of infraction served upon the named individual by an arresting officer.

The abstract provided to the insurance company shall exclude any information except that related to the commission of misdemeanors or felonies by the individual pertaining to law enforcement officers or fire fighters as defined in RCW 41.26.030, or any officer of the Washington state patrol, while driving official vehicles in the performance of occupational duty.

The director shall collect for each abstract the sum of four dollars and fifty cents which shall be deposited in the highway safety fund.

Any insurance company or its agent receiving the certified abstract shall use it exclusively for its own underwriting purposes and shall not divulge any of the information contained in it to a third party. No policy of insurance may be canceled, nonrenewed, denied, or have the rate increased on the basis of such information unless the policyholder was determined to be at fault. No insurance company or its agent for underwriting purposes relating to the operation of commercial motor vehicles may use any information contained in the abstract relative to any person's operation of motor vehicles while not engaged in such employment, nor may any insurance company or its agent for underwriting purposes relating to the operation of noncommercial motor vehicles use any information contained in the abstract relative to any person's operation of commercial motor vehicles.

Any employer or prospective employer receiving the certified abstract shall use it exclusively for his own purpose to determine whether the licensee should be permitted to operate a commercial vehicle or school bus upon the public highways of this state and shall not divulge any information contained in it to a third party.

Any alcohol/drug assessment or treatment agency approved by the department of social and health services receiving the certified abstract shall use it exclusively for the purpose of assisting its employees in making a determination as to what level of treatment, if any, is appropriate. The agency, or any of its employees, shall not divulge any information contained in the abstract to a third party.

Any violation of this section is a gross misdemeanor. [1991 c 243 § 1; 1989 c 178 § 24. Prior: 1987 1st ex.s. c 9 § 2; 1987 c 397 § 2; 1987 c 181 § 1; 1986 c 74 § 1; 1985 ex.s. c 1 § 11; 1979 ex.s. c 136 § 84; 1977 ex.s. c 356 § 2; 1977 ex.s. c 140 § 1; 1973 1st ex.s. c 37 § 1; 1969 ex.s. c 40 § 3; 1967 c 174 § 2; 1967 c 32 § 63; 1963 c 169 § 65; 1961 ex.s. c 21 § 27.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Severability—Effective dates—1989 c 178: See RCW 46.25.900 and 46.25.901.

Severability—Effective date—1987 1st ex.s. c 9: See notes following RCW 46.29.050.

Intent—1987 c 397: See note following RCW 46.61.410.

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Effective date—1967 c 174: See note following RCW 46.29.050.

Abstract of driving record to be furnished: RCW 46.29.050.

Use of highway safety fund to defray cost of furnishing and maintaining driving records: RCW 46.68.060.

Chapter 46.55

ABANDONED, UNAUTHORIZED, AND JUNK VEHICLES—TOW TRUCK OPERATORS

Sections

- 46.55.010 Definitions.
- 46.55.100 Impound notice—Abandoned vehicle report—Owner information—Disposition report.
- 46.55.140 Operator's lien, deficiency claim, liability.
- 46.55.230 Junk vehicles—Removal, disposal, sale.
- 46.55.240 Local ordinances—Requirements.

Size, weight, and load exemptions for tow trucks: RCW 46.44.015.

46.55.010 Definitions. The definitions set forth in this section apply throughout this chapter:

(1) "Abandoned vehicle" means a vehicle that a registered tow truck operator has impounded and held in the operator's possession for ninety-six consecutive hours.

(2) "Abandoned vehicle report" means the document prescribed by the state that the towing operator forwards to the department after a vehicle has become abandoned.

(3) "Impound" means to take and hold a vehicle in legal custody. There are two types of impounds—public and private.

(a) "Public impound" means that the vehicle has been impounded at the direction of a law enforcement officer or by a public official having jurisdiction over the public property upon which the vehicle was located.

(b) "Private impound" means that the vehicle has been impounded at the direction of a person having control or possession of the private property upon which the vehicle was located.

(4) "Junk vehicle" means a vehicle certified under RCW 46.55.230 as meeting all the following requirements:

- (a) Is three years old or older;
- (b) Is extensively damaged, such damage including but not limited to any of the following: A broken window or windshield or missing wheels, tires, motor, or transmission;
- (c) Is apparently inoperable;
- (d) Is without a valid, current registration plate;
- (e) Has an approximate fair market value equal only to the approximate value of the scrap in it.

(5) "Master log" means the document or an electronic facsimile prescribed by the department and the Washington state patrol in which an operator records transactions involving impounded vehicles.

(6) "Registered tow truck operator" or "operator" means any person who engages in the impounding, transporting, or storage of unauthorized vehicles or the disposal of abandoned vehicles.

(7) "Residential property" means property that has no more than four living units located on it.

(8) "Tow truck" means a motor vehicle that is equipped for and used in the business of towing vehicles with equipment as approved by the state patrol.

(9) "Tow truck number" means the number issued by the department to tow trucks used by a registered tow truck operator in the state of Washington.

(10) "Tow truck permit" means the permit issued annually by the department that has the classification of service the tow truck may provide stamped upon it.

(11) "Tow truck service" means the transporting upon the public streets and highways of this state of vehicles, together with personal effects and cargo, by a tow truck of a registered operator.

(12) "Unauthorized vehicle" means a vehicle that is subject to impoundment after being left unattended in one of the following public or private locations for the indicated period of time:

Subject to removal after:

- (a) Public locations:
 - (i) Constituting an accident or a traffic hazard as defined in RCW 46.55.113 Immediately
 - (ii) On a highway and tagged as described in RCW 46.55.085 24 hours
 - (iii) In a publicly owned or controlled parking facility, properly posted under RCW 46.55.070 Immediately
- (b) Private locations:
 - (i) On residential property Immediately
 - (ii) On private, nonresidential property, properly posted under RCW 46.55.070 Immediately
 - (iii) On private, nonresidential property, not posted. 24 hours

[1991 c 292 § 1; 1989 c 111 § 1. Prior: 1987 c 330 § 739; 1987 c 311 § 1; 1985 c 377 § 1.]

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

46.55.100 Impound notice—Abandoned vehicle report—Owner information—Disposition report. (1) At the time of impoundment the registered tow truck operator providing the towing service shall give immediate notification, by telephone or radio, to a law enforcement agency having jurisdiction who shall maintain a log of such reports. A law enforcement agency, or a private communication center acting on behalf of a law enforcement agency, shall within six to twelve hours of the impoundment, provide to a requesting operator the name and address of the legal and registered owners of the vehicle, the vehicle identification number, and any other

necessary, pertinent information. The initial notice of impoundment shall be followed by a written or electronic facsimile notice within twenty-four hours. In the case of a vehicle from another state, time requirements of this subsection do not apply until the requesting law enforcement agency in this state receives the information.

(2) The operator shall immediately send an abandoned vehicle report to the department for any vehicle in the operator's possession after the ninety-six hour abandonment period. Such report need not be sent when the impoundment is pursuant to a writ, court order, or police hold. The owner notification and abandonment process shall be initiated by the registered tow truck operator immediately following notification by a court or law enforcement officer that the writ, court order, or police hold is no longer in effect.

(3) Following the submittal of an abandoned vehicle report, the department shall provide the registered tow truck operator with owner information within seventy-two hours.

(4) Within fifteen days of the sale of an abandoned vehicle at public auction, the towing operator shall send a copy of the abandoned vehicle report showing the disposition of the abandoned vehicle to the crime information center of the Washington state patrol.

(5) If the operator sends an abandoned vehicle report to the department and the department finds no owner information, an operator may proceed with an inspection of the vehicle to determine whether owner identification is within the vehicle.

(6) If the operator finds no owner identification, the operator shall immediately notify the appropriate law enforcement agency, which shall search the vehicle for the vehicle identification number and check the necessary records to determine the vehicle's owners. [1991 c 20 § 1; 1989 c 111 § 9; 1987 c 311 § 8; 1985 c 377 § 10.]

46.55.140 Operator's lien, deficiency claim, liability.

(1) A registered tow truck operator who has a valid and signed impoundment authorization has a lien upon the impounded vehicle for services provided in the towing and storage of the vehicle, unless the impoundment is determined to have been invalid. The lien does not apply to personal property in or upon the vehicle that is not permanently attached to or is not an integral part of the vehicle. The registered tow truck operator also has a deficiency claim against the registered owner of the vehicle for services provided in the towing and storage of the vehicle not to exceed the sum of three hundred dollars less the amount bid at auction, and for vehicles of over ten thousand pounds gross vehicle weight, the operator has a deficiency claim of one thousand dollars less the amount bid at auction, unless the impound is determined to be invalid. In no case may the cost of the auction or a buyer's fee be added to the amount charged for the vehicle at the auction, the vehicle's lien, or the overage due. A registered owner who has completed and filed with the department the seller's report as provided for by RCW 46.12.101 and has timely and properly filed the seller's report is relieved of liability under this section.

The person named as the new owner of the vehicle on the timely and properly filed seller's report shall assume liability under this section.

(2) Any person who tows, removes, or otherwise disturbs any vehicle parked, stalled, or otherwise left on privately owned or controlled property, and any person owning or controlling the private property, or either of them, are liable to the owner or operator of a vehicle, or each of them, for consequential and incidental damages arising from any interference with the ownership or use of the vehicle which does not comply with the requirements of this chapter. [1991 c 20 § 2; 1989 c 111 § 13; 1987 c 311 § 14; 1985 c 377 § 14.]

46.55.230 Junk vehicles—Removal, disposal, sale.

(1) Notwithstanding any other provision of law, any law enforcement officer having jurisdiction or any person authorized by the director shall inspect and may authorize the disposal of an abandoned junk vehicle. The person making the inspection shall record the make and vehicle identification number or license number of the vehicle if available, and shall also verify that the approximate value of the junk vehicle is equivalent only to the approximate value of the scrap in it.

(2) The law enforcement officer or department representative shall provide information on the vehicle's registered and legal owner to the landowner.

(3) Upon receiving information on the vehicle's registered and legal owner, the landowner shall mail a notice to the registered and legal owners shown on the records of the department. The notification shall describe the redemption procedure and the right to arrange for the removal of the vehicle.

(4) If the vehicle remains unclaimed more than fifteen days after the landowner has mailed notification to the registered and legal owner, the landowner may dispose of the vehicle or sign an affidavit of sale to be used as a title document.

(5) If no information on the vehicle's registered and legal owner is found in the records of the department, the landowner may immediately dispose of the vehicle or sign an affidavit of sale to be used as a title document.

(6) The landowner of the property upon which the junk vehicle is located is entitled to recover from the vehicle's registered owner any costs incurred in the removal of the junk vehicle.

(7) For the purposes of this section, the term "landowner" includes a legal owner of private property, a person with possession or control of private property, or a public official having jurisdiction over public property.

(8) A person complying in good faith with the requirements of this section is immune from any liability arising out of an action taken or omission made in the compliance. [1991 c 292 § 2; 1987 c 311 § 19; 1985 c 377 § 23.]

46.55.240 Local ordinances—Requirements. (1) A city, town, or county that adopts an ordinance or resolution concerning unauthorized, abandoned, or impounded vehicles shall include the applicable provisions of this chapter.

(a) A city, town, or county may, by ordinance, authorize other impound situations that may arise locally upon the public right-of-way or other publicly owned or controlled property.

(b) A city, town, or county ordinance shall contain language that establishes a written form of authorization to impound, which may include a law enforcement notice of infraction or citation, clearly denoting the agency's authorization to impound.

(c) A city, town, or county may, by ordinance, provide for release of an impounded vehicle by means of a promissory note in lieu of immediate payment, if at the time of redemption the legal or registered owner requests a hearing on the validity of the impoundment. If the municipal ordinance directs the release of an impounded vehicle before the payment of the impoundment charges, the municipality is responsible for the payment of those charges to the registered tow truck operator within thirty days of the hearing date.

(d) The hearing specified in RCW 46.55.120(2) and in this section may be conducted by an administrative hearings officer instead of in the district court. A decision made by an administrative hearing officer may be appealed to the district court for final judgment.

(2) A city, town, or county may adopt an ordinance establishing procedures for the abatement and removal as public nuisances of junk vehicles or parts thereof from private property. Costs of removal may be assessed against the registered owner of the vehicle if the identity of the owner can be determined, unless the owner in the transfer of ownership of the vehicle has complied with RCW 46.12.101, or the costs may be assessed against the owner of the property on which the vehicle is stored.

(3) Ordinances pertaining to public nuisances shall contain:

(a) A provision requiring notice to the last registered owner of record and the property owner of record that a hearing may be requested and that if no hearing is requested, the vehicle will be removed;

(b) A provision requiring that if a request for a hearing is received, a notice giving the time, location, and date of the hearing on the question of abatement and removal of the vehicle or part thereof as a public nuisance shall be mailed, by certified mail, with a five-day return receipt requested, to the owner of the land as shown on the last equalized assessment roll and to the last registered and legal owner of record unless the vehicle is in such condition that identification numbers are not available to determine ownership;

(c) A provision that the ordinance shall not apply to (i) a vehicle or part thereof that is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property or (ii) a vehicle or part thereof that is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler or licensed vehicle dealer and is fenced according to RCW 46.80.130;

(d) A provision that the owner of the land on which the vehicle is located may appear in person at the hearing or present a written statement in time for consideration at the hearing, and deny responsibility for the

presence of the vehicle on the land, with his reasons for the denial. If it is determined at the hearing that the vehicle was placed on the land without the consent of the landowner and that he has not subsequently acquiesced in its presence, then the local agency shall not assess costs of administration or removal of the vehicle against the property upon which the vehicle is located or otherwise attempt to collect the cost from the owner;

(e) A provision that after notice has been given of the intent of the city, town, or county to dispose of the vehicle and after a hearing, if requested, has been held, the vehicle or part thereof shall be removed at the request of a law enforcement officer with notice to the Washington state patrol and the department of licensing that the vehicle has been wrecked. The city, town, or county may operate such a disposal site when its governing body determines that commercial channels of disposition are not available or are inadequate, and it may make final disposition of such vehicles or parts, or may transfer such vehicle or parts to another governmental body provided such disposal shall be only as scrap.

(4) A registered disposer under contract to a city or county for the impounding of vehicles shall comply with any administrative regulations adopted by the city or county on the handling and disposing of vehicles. [1991 c 292 § 3; 1989 c 111 § 17; 1987 c 311 § 20; 1985 c 377 § 24.]

**Chapter 46.61
RULES OF THE ROAD**

Sections	
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46.61.005 Provisions of chapter refer to vehicles upon the highways—Exceptions. The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

(1) Where a different place is specifically referred to in a given section.

(2) The provisions of RCW 46.52.010 through 46.52-.090 and 46.61.500 through 46.61.525 shall apply upon highways and elsewhere throughout the state. [1990 c 291 § 4; 1965 ex.s. c 155 § 1.]

46.61.055 Traffic control signal legend. Whenever traffic is controlled by traffic control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red and yellow shall be used, except for special pedestrian signals carrying a word or legend, and said lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(1) Green indication

(a) Vehicle operators facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicle operators turning right or left shall stop to allow other vehicles or pedestrians lawfully within the intersection control area to complete their movements.

(b) Vehicle operators facing a green arrow signal, shown alone or in combination with another indication, may enter the intersection control area only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. The vehicle operators shall stop to allow other vehicles or pedestrians lawfully within the intersection control area to complete their movements.

(c) Unless otherwise directed by a pedestrian control signal, as provided in RCW 46.61.060 as now or hereafter amended, pedestrians facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(2) Steady yellow indication

(a) Vehicle operators facing a steady circular yellow or yellow arrow signal are thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection.

(b) Pedestrians facing a steady circular yellow or yellow arrow signal, unless otherwise directed by a pedestrian control signal as provided in RCW 46.61.060 shall not enter the roadway, but if pedestrians have begun to cross before the display of either signal, vehicle operators shall stop to allow them to complete their movements.

(3) Steady red indication

(a) Vehicle operators facing a steady circular red signal alone shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection control area and shall remain standing until an indication to proceed is shown. However, the vehicle operators facing a steady circular red signal may, after

stopping proceed to make a right turn from a one-way or two-way street into a two-way street or into a one-way street carrying traffic in the direction of the right turn; or a left turn from a one-way or two-way street into a one-way street carrying traffic in the direction of the left turn; unless a sign posted by competent authority prohibits such movement; but vehicle operators planning to make such turns shall remain stopped to allow other vehicles lawfully within or approaching the intersection control area, or approaching pedestrians lawfully within an adjacent crosswalk, to complete their movements.

(b) Unless otherwise directed by a pedestrian control signal as provided in RCW 46.61.060 as now or hereafter amended, pedestrians facing a steady circular red signal alone shall not enter the roadway.

(c) Vehicle operators facing a steady red arrow indication may not enter the intersection control area to make the movement indicated by such arrow, and unless entering the intersection control area to make such other movement as is permitted by other indications shown at the same time, shall stop at a clearly marked stop line, but if none, before entering a crosswalk on the near side of the intersection control area, or if none, then before entering the intersection control area and shall remain standing until an indication to make the movement indicated by such arrow is shown. However, the vehicle operators facing a steady red arrow indication may, after stopping proceed to make a right turn from a one-way or two-way street into a two-way street or into a one-way street carrying traffic in the direction of the right turn; or a left turn from a one-way street or two-way street into a one-way street carrying traffic in the direction of the left turn; unless a sign posted by competent authority prohibits such movement; but vehicle operators planning to make such turns shall remain stopped to allow other vehicles lawfully within or approaching the intersection control area, or approaching pedestrians lawfully within an adjacent crosswalk, to complete their movements.

(d) Unless otherwise directed by a pedestrian signal, pedestrians facing a steady red arrow signal indication shall not enter the roadway.

(4) If an official traffic control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal. [1990 c 241 § 2; 1975 c 62 § 19; 1965 ex.s. c 155 § 8.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.060 Pedestrian control signals. Whenever pedestrian control signals exhibiting the words "Walk" or the walking person symbol or "Don't Walk" or the hand symbol are operating, the signals shall indicate as follows:

(1) WALK or walking person symbol—Pedestrians facing such signal may cross the roadway in the direction of the signal. Pedestrians that begin to cross a

roadway while facing such signal shall be granted the right to complete their crossing by all vehicle operators.

(2) Steady or flashing DON'T WALK or hand symbol—Pedestrians shall not enter the roadway, but if pedestrians have begun to cross before the display of either signal, vehicle operators shall stop to allow them to complete their movements.

(3) Pedestrian control signals having the "Wait" legend in use on August 6, 1965, shall be deemed authorized signals and shall indicate the same as the "Don't Walk" legend. Whenever such pedestrian control signals are replaced the legend "Wait" shall be replaced by the legend "Don't Walk". [1990 c 241 § 3; 1975 c 62 § 20; 1965 ex.s. c 155 § 9.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.165 Reservation of portion of highway for use by public transportation vehicles, etc. The state department of transportation and the local authorities are authorized to reserve all or any portion of any highway under their respective jurisdictions, including any designated lane or ramp, for the exclusive or preferential use of public transportation vehicles or private motor vehicles carrying no fewer than a specified number of passengers when such limitation will increase the efficient utilization of the highway or will aid in the conservation of energy resources. There is hereby appropriated from the transportation fund—state to the department of transportation, program C for the period ending June 30, 1993, an additional \$15 million for the sole purpose of expediting completion of the HOV core lane system. Regulations authorizing such exclusive or preferential use of a highway facility may be declared to be effective at all times or at specified times of day or on specified days. The department shall evaluate the efficacy of the vehicle occupancy requirements and shall report to the legislative transportation committee by January 1, 1992. [1991 1st sp.s. c 15 § 67; 1984 c 7 § 65; 1974 ex.s. c 133 § 2.]

Construction—**Severability**—1991 1st sp.s. c 15: See note following RCW 46.68.110.

Severability—1984 c 7: See note following RCW 47.01.141.

46.61.205 Vehicle entering highway from private road or driveway. The driver of a vehicle about to enter or cross a highway from a private road or driveway shall yield the right of way to all vehicles lawfully approaching on said highway. [1990 c 250 § 88; 1965 ex.s. c 155 § 31.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1990 c 250: See note following RCW 46.16.301.

46.61.235 Stopping for pedestrians in crosswalks. (1) When traffic-control signals are not in place or not in operation, the operator of an approaching vehicle shall stop to allow a pedestrian to cross the roadway within an unmarked or marked crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is upon the opposite half of the roadway and moving toward the approaching vehicle.

(2) No pedestrian shall suddenly leave a curb or other place of safety and walk, run, or otherwise move into the path of a vehicle which is so close that it is impossible for the driver to stop.

(3) Subsection (1) of this section does not apply under the conditions stated in RCW 46.61.240(2).

(4) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle. [1990 c 241 § 4; 1965 ex.s. c 155 § 34.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

46.61.240 Crossing at other than crosswalks. (1) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles upon the roadway.

(2) Where curb ramps exist at or adjacent to intersections or at marked crosswalks in other locations, disabled persons may enter the roadway from the curb ramps and cross the roadway within or as closely as practicable to the crosswalk. All other pedestrian rights and duties as defined elsewhere in this chapter remain applicable.

(3) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right of way to all vehicles upon the roadway.

(4) Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

(5) No pedestrian shall cross a roadway intersection diagonally unless authorized by official traffic-control devices; and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic-control devices pertaining to such crossing movements.

(6) No pedestrian shall cross a roadway at an unmarked crosswalk where an official sign prohibits such crossing. [1990 c 241 § 5; 1965 ex.s. c 155 § 35.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

46.61.250 Pedestrians on roadways. (1) Where sidewalks are provided it is unlawful for any pedestrian to walk or otherwise move along and upon an adjacent roadway. Where sidewalks are provided but wheelchair access is not available, disabled persons who require such access may walk or otherwise move along and upon an adjacent roadway until they reach an access point in the sidewalk.

(2) Where sidewalks are not provided any pedestrian walking or otherwise moving along and upon a highway shall, when practicable, walk or move only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction and upon meeting an oncoming vehicle shall move clear of the roadway. [1990 c 241 § 6; 1965 ex.s. c 155 § 37.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

46.61.266 Pedestrians under the influence of alcohol or drugs. A law enforcement officer may offer to transport a pedestrian who appears to be under the influence of alcohol or any drug and who is walking or moving along or within the right of way of a public roadway, unless the pedestrian is to be taken into protective custody under RCW 70.96A.120.

The law enforcement officer offering to transport an intoxicated pedestrian under this section shall:

(1) Transport the intoxicated pedestrian to a safe place; or

(2) Release the intoxicated pedestrian to a competent person.

The law enforcement officer shall take no action if the pedestrian refuses this assistance. No suit or action may be commenced or prosecuted against the law enforcement officer, law enforcement agency, the state of Washington, or any political subdivision of the state for any act resulting from the refusal of the pedestrian to accept this assistance. [1990 c 241 § 7; 1987 c 11 § 1; 1975 c 62 § 43.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.370 Overtaking or meeting school bus—Duties of bus driver. (1) The driver of a vehicle upon overtaking or meeting from either direction any school bus which has stopped on the roadway for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus when there is in operation on said school bus a visual signal as specified in RCW 46.37.190 and said driver shall not proceed until such school bus resumes motion or the visual signals are no longer activated.

(2) The driver of a vehicle upon a highway divided into separate roadways as provided in RCW 46.61.150 need not stop upon meeting a school bus which is proceeding in the opposite direction and is stopped for the purpose of receiving or discharging school children.

(3) The driver of a vehicle upon a highway with three or more marked traffic lanes need not stop upon meeting a school bus which is proceeding in the opposite direction and is stopped for the purpose of receiving or discharging school children.

(4) The driver of a school bus shall actuate the visual signals required by RCW 46.37.190 only when such bus is stopped on the roadway for the purpose of receiving or discharging school children.

(5) The driver of a school bus may stop completely off the roadway for the purpose of receiving or discharging school children only when the school children do not have to cross the roadway. The school bus driver shall actuate the hazard warning lamps as defined in RCW 46.37.215 before loading or unloading school children at such stops. [1990 c 241 § 8; 1965 ex.s. c 155 § 52.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Bus routes: RCW 28A.160.115.

46.61.375 Overtaking or meeting private carrier bus—Duties of bus driver. (1) The driver of a vehicle

upon overtaking or meeting from either direction any private carrier bus which has stopped on the roadway for the purpose of receiving or discharging any passenger shall stop the vehicle before reaching such private carrier bus when there is in operation on said bus a visual signal as specified in RCW 46.37.190 and said driver shall not proceed until such bus resumes motion or the visual signals are no longer activated.

(2) The driver of a vehicle upon a highway divided into separate roadways as provided in RCW 46.61.150 need not stop upon meeting a private carrier bus which is proceeding in the opposite direction and is stopped for the purpose of receiving or discharging passengers.

(3) The driver of a vehicle upon a highway with three or more lanes need not stop upon meeting a private carrier bus which is proceeding in the opposite direction and is stopped for the purpose of receiving or discharging passengers.

(4) The driver of a private carrier bus shall actuate the visual signals required by RCW 46.37.190 only when such bus is stopped on the roadway for the purpose of receiving or discharging passengers.

(5) The driver of a private carrier bus may stop a private carrier bus completely off the roadway for the purpose of receiving or discharging passengers only when the passengers do not have to cross the roadway. The private carrier bus driver shall actuate the hazard warning lamps as defined in RCW 46.37.215 before loading or unloading passengers at such stops. [1990 c 241 § 9; 1970 ex.s. c 100 § 8.]

46.61.385 School patrol—Appointment—Authority—Finance—Insurance. The superintendent of public instruction, through the superintendent of schools of any school district, or other officer or board performing like functions with respect to the schools of any other educational administrative district, may cause to be appointed voluntary adult recruits as supervisors and, from the student body of any public or private school or institution of learning, students, who shall be known as members of the "school patrol" and who shall serve without compensation and at the pleasure of the authority making the appointment.

The members of such school patrol shall wear an appropriate designation or insignia identifying them as members of the school patrol when in performance of their duties, and they may display "stop" or other proper traffic directional signs or signals at school crossings or other points where school children are crossing or about to cross a public highway, but members of the school patrol and their supervisors shall be subordinate to and obey the orders of any peace officer present and having jurisdiction.

School districts, at their discretion, may hire sufficient numbers of adults to serve as supervisors. Such adults shall be subordinate to and obey the orders of any peace officer present and having jurisdiction.

Any school district having a school patrol may purchase uniforms and other appropriate insignia, traffic signs and other appropriate materials, all to be used by members of such school patrol while in performance of

their duties, and may pay for the same out of the general fund of the district.

It shall be unlawful for the operator of any vehicle to fail to stop his vehicle when directed to do so by a school patrol sign or signal displayed by a member of the school patrol engaged in the performance of his duty and wearing or displaying appropriate insignia, and it shall further be unlawful for the operator of a vehicle to disregard any other reasonable directions of a member of the school patrol when acting in performance of his duties as such.

School districts may expend funds from the general fund of the district to pay premiums for life and accident policies covering the members of the school patrol in their district while engaged in the performance of their school patrol duties.

Members of the school patrol shall be considered as employees for the purposes of RCW 28A.400.370. [1990 c 33 § 585; 1974 ex.s. c 47 § 1; 1961 c 12 § 46.48.160. Prior: 1953 c 278 § 1; 1937 c 189 § 130; RRS § 6360-130; 1927 c 309 § 42; RRS § 6362-42. Formerly RCW 46.48.160.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

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

46.61.455 Vehicles with solid or hollow cushion tires. Except for vehicles equipped with temporary-use spare tires that meet federal standards, it shall be unlawful to operate any vehicle equipped or partly equipped with solid rubber tires or hollow center cushion tires, or to operate any combination of vehicles any part of which is equipped or partly equipped with solid rubber tires or hollow center cushion tires, so long as solid rubber tires or hollow center cushion tires may be used under the provisions of this title, upon any public highway of this state at a greater rate of speed than ten miles per hour: PROVIDED, That the temporary-use spare tires are installed and used in accordance with the manufacturer's instructions. [1990 c 105 § 3; 1961 c 12 § 46.48.110. Prior: 1947 c 200 § 11; 1937 c 189 § 73; Rem. Supp. 1947 § 6360-73. Formerly RCW 46.48.110.]

46.61.500 Reckless driving—Penalty. (1) Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving. Violation of the provisions of this section is a gross misdemeanor punishable by imprisonment of not more than one year and by a fine of not more than five thousand dollars.

(2) The license or permit to drive or any nonresident privilege of any person convicted of reckless driving shall be suspended by the department for not less than thirty days. [1990 c 291 § 1; 1979 ex.s. c 136 § 85; 1967 c 32 § 67; 1965 ex.s. c 155 § 59.]

Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Arrest of person involved in reckless driving: RCW 10.31.100.

Embracing another while driving as reckless driving: RCW 46.61.665.

Excess speed as prima facie evidence of reckless driving: RCW 46.61.465.

Racing of vehicles on public highways, reckless driving: RCW 46.61.530.

Revocation of license, reckless driving: RCW 46.20.285.

46.61.520 Vehicular homicide—Penalty. (1) When the death of any person ensues within three years as a proximate result of injury proximately caused by the driving of any vehicle by any person, the driver is guilty of vehicular homicide if the driver was operating a motor vehicle:

(a) While under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502; or

(b) In a reckless manner; or

(c) With disregard for the safety of others.

(2) Vehicular homicide is a class B felony punishable under chapter 9A.20 RCW. [1991 c 348 § 1; 1983 c 164 § 1; 1975 1st ex.s. c 287 § 3; 1973 2nd ex.s. c 38 § 2; 1970 ex.s. c 49 § 5; 1965 ex.s. c 155 § 63; 1961 c 12 § 46.56.040. Prior: 1937 c 189 § 120; RRS § 6360-120. Formerly RCW 46.56.040.]

Effective date—1991 c 348: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 348 § 5.]

Severability—1973 2nd ex.s. c 38: See note following RCW 69.50.101.

Severability—1970 ex.s. c 49: See note following RCW 9.69.100.

Suspension or revocation of license upon conviction of vehicular homicide or assault resulting from operation of motor vehicle: RCW 46.20.285, 46.20.291.

46.61.524 Vehicular homicide, assault—Evaluation, treatment of drug or alcohol problem. (1) A person convicted under RCW 46.61.520(1)(a) or 46.61.522(1)(b) shall, as a condition of community supervision imposed under RCW 9.94A.383 or community placement imposed under RCW 9.94A.120(8), complete a diagnostic evaluation by an alcohol or drug dependency agency approved by the department of social and health services or a qualified probation department, as defined under RCW 46.61.516 that has been approved by the department of social and health services. This report shall be forwarded to the department of licensing. If the person is found to have an alcohol or drug problem that requires treatment, the person shall complete treatment in a program approved by the department of social and health services under chapter 70.96A RCW. If the person is found not to have an alcohol or drug problem that requires treatment, he or she shall complete a course in an information school approved by the department of social and health services under chapter 70.96A RCW. The convicted person shall pay all costs for any evaluation, education, or treatment required by this section, unless the person is eligible for an existing program offered or approved by the department of social and health services. Nothing in *this act requires the addition of new treatment or assessment facilities nor affects the department of social and health services use of existing programs and facilities authorized by law.

(2) As provided for under RCW 46.20.285, the department shall revoke the license, permit to drive, or a

nonresident privilege of a person convicted of vehicular homicide under RCW 46.61.520 or vehicular assault under RCW 46.61.522. The department shall determine the eligibility of a person convicted of vehicular homicide under RCW 46.61.520(1)(a) or vehicular assault under [RCW] 46.61.522(1)(b) to receive a license based upon the report provided by the designated alcoholism treatment facility or probation department, and shall deny reinstatement until satisfactory progress in an approved program has been established and the person is otherwise qualified. [1991 c 348 § 2.]

***Reviser's note:** This act [1991 c 348] consisted of the amendment of RCW 9.94A.030 and 46.61.520 and the enactment of this section. The amendment of RCW 9.94A.120 was vetoed by the governor.

Effective date—1991 c 348: See note following RCW 46.61.520.

46.61.560 Stopping, standing, or parking outside business or residence districts. (1) Outside of incorporated cities and towns no person may stop, park, or leave standing any vehicle, whether attended or unattended, upon the roadway.

(2) Subsection (1) of this section and RCW 46.61.570 and 46.61.575 do not apply to the driver of any vehicle that is disabled in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving the vehicle in such position. The driver shall nonetheless arrange for the prompt removal of the vehicle as required by RCW 46.61.590.

(3) Subsection (1) of this section does not apply to the driver of a public transit vehicle who temporarily stops the vehicle upon the roadway for the purpose of and while actually engaged in receiving or discharging passengers at a marked transit vehicle stop zone approved by the state department of transportation or a county upon highways under their respective jurisdictions.

(4) Subsection (1) of this section and RCW 46.61.570 and 46.61.575 do not apply to the driver of a solid waste collection company or recycling company vehicle who temporarily stops the vehicle as close as practical to the right edge of the right-hand shoulder of the roadway or right edge of the roadway if no shoulder exists for the purpose of and while actually engaged in the collection of solid waste or recyclables, or both, under chapters 81.77, 35.21, and 35A.21 RCW or by contract under RCW 36.58.030 [36.58.040]. [1991 c 319 § 408; 1984 c 7 § 72; 1979 ex.s. c 178 § 20; 1977 c 24 § 2; 1965 ex.s. c 155 § 64.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1979 ex.s. c 178: See note following RCW 46.61.590.

Unattended motor vehicles: RCW 46.61.600.

46.61.582 Free parking by disabled persons. Any person who meets the criteria for special parking privileges under RCW 46.16.381 shall be allowed free of charge to park a vehicle being used to transport that person for unlimited periods of time in parking zones or areas including zones or areas with parking meters

which are otherwise restricted as to the length of time parking is permitted. This section does not apply to those zones or areas in which the stopping, parking, or standing of all vehicles is prohibited or which are reserved for special types of vehicles. The person shall obtain and display a special placard or license plate under RCW 46.16.381 to be eligible for the privileges under this section. [1991 c 339 § 25; 1984 c 154 § 5.]

Intent—Application—Severability—1984 c 154: See notes following RCW 46.16.381.

46.61.583 Special plate or card issued by another jurisdiction. A special license plate or card issued by another state or country that indicates an occupant of the vehicle is disabled, entitles the vehicle on or in which it is displayed and being used to transport the disabled person to the same overtime parking privileges granted under this chapter to a vehicle with a similar special license plate or card issued by this state. [1991 c 339 § 26; 1984 c 51 § 2.]

46.61.585 Winter recreational parking areas—Special permit required. Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic control device, no person shall park a vehicle in an area designated by an official sign that it is a winter recreational parking area unless such vehicle displays, in accordance with regulations adopted by the parks and recreation commission, a special winter recreational area parking permit or permits. [1990 c 49 § 4; 1975 1st ex.s. c 209 § 5.]

Severability—1975 1st ex.s. c 209: See note following RCW 43.51.290.

Winter recreational parking areas: RCW 43.51.290 through 43.51.340.

46.61.655 Permitting escape of load materials. (1) No vehicle shall be driven or moved on any public highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction. Any person operating a vehicle from which any glass or objects have fallen or escaped, which would constitute an obstruction or injure a vehicle or otherwise endanger travel upon such public highway shall immediately cause the public highway to be cleaned of all such glass or objects and shall pay any costs therefor.

(2) No person may operate on any public highway any vehicle with any load unless the load and such covering as required thereon by subsection (3) of this section is securely fastened to prevent the covering or load from becoming loose, detached, or in any manner a hazard to other users of the highway.

(3) Any vehicle operating on a paved public highway with a load of dirt, sand, or gravel susceptible to being dropped, spilled, leaked, or otherwise escaping therefrom shall be covered so as to prevent spillage. Covering of such loads is not required if six inches of freeboard is maintained within the bed.

(4) Any vehicle with deposits of mud, rocks, or other debris on the vehicle's body, fenders, frame, undercarriage, wheels, or tires shall be cleaned of such material before the operation of the vehicle on a paved public highway.

(5) The state patrol may make necessary rules to carry into effect the provisions of this section, applying such provisions to specific conditions and loads and prescribing means, methods, and practices to effectuate such provisions.

(6) Nothing in this section may be construed to prohibit a public maintenance vehicle from dropping sand on a highway to enhance traction, or sprinkling water or other substances to clean or maintain a highway. [1990 c 250 § 56; 1986 c 89 § 1; 1971 ex.s. c 307 § 22; 1965 ex.s. c 52 § 1; 1961 c 12 § 46.56.135. Prior: 1947 c 200 § 3, part; 1937 c 189 § 44, part; Rem. Supp. 1947 § 6360-44, part. Formerly RCW 46.56.135.]

Rules of court: Monetary penalty schedule—JTIR 6.2.

Severability—1990 c 250: See note following RCW 46.16.301.

Severability—1971 ex.s. c 307: See RCW 70.93.900.

46.61.685 Leaving children unattended in standing vehicle with motor running—Penalty. It is unlawful for any person, while operating or in charge of a vehicle, to park or willfully allow such vehicle to stand upon a public highway or in a public place with its motor running, leaving a minor child or children under the age of sixteen years unattended in the vehicle.

Any person violating the provisions of this section is guilty of a misdemeanor. Upon a second or subsequent conviction for a violation of this section, the department shall revoke the operator's license of such person. [1990 c 250 § 57; 1961 c 151 § 2. Formerly RCW 46.56.230.]

Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.

Severability—1990 c 250: See note following RCW 46.16.301.

Leaving children unattended in parked automobile while entering tavern, etc.: RCW 9.91.060.

46.61.688 Safety belts, use required—Penalties—Exemptions. (1) For the purposes of this section, the term "motor vehicle" includes:

(a) "Buses," meaning motor vehicles with motive power, except trailers, designed to carry more than ten passengers;

(b) "Multipurpose passenger vehicles," meaning motor vehicles with motive power, except trailers, designed to carry ten persons or less that are constructed either on a truck chassis or with special features for occasional off-road operation;

(c) "Passenger cars," meaning motor vehicles with motive power, except multipurpose passenger vehicles, motorcycles, or trailers, designed for carrying ten passengers or less; and

(d) "Trucks," meaning motor vehicles with motive power, except trailers, designed primarily for the transportation of property.

(2) This section only applies to motor vehicles that meet the manual seat belt safety standards as set forth

in federal motor vehicle safety standard 208. This section does not apply to a vehicle occupant for whom no safety belt is available when all designated seating positions as required by federal motor vehicle safety standard 208 are occupied.

(3) Every person sixteen years of age or older operating or riding in a motor vehicle shall wear the safety belt assembly in a properly adjusted and securely fastened manner.

(4) No person may operate a motor vehicle unless all passengers under the age of sixteen years are either wearing a safety belt assembly or are securely fastened into an approved child restraint device.

(5) A person violating this section shall be issued a notice of traffic infraction under chapter 46.63 RCW. A finding that a person has committed a traffic infraction under this section shall be contained in the driver's abstract but shall not be available to insurance companies or employers.

(6) Failure to comply with the requirements of this section does not constitute negligence, nor may failure to wear a safety belt assembly be admissible as evidence of negligence in any civil action.

(7) Enforcement of this section by law enforcement officers may be accomplished only as a secondary action when a driver of a motor vehicle has been detained for a suspected violation of Title 46 RCW or an equivalent local ordinance or some other offense.

(8) This section does not apply to an operator or passenger who possesses written verification from a licensed physician that the operator or passenger is unable to wear a safety belt for physical or medical reasons.

(9) The state patrol may adopt rules exempting operators or occupants of farm vehicles, construction equipment, and vehicles that are required to make frequent stops from the requirement of wearing safety belts. [1990 c 250 § 58; 1986 c 152 § 1.]

Severability—1990 c 250: See note following RCW 46.16.301.

Study of effectiveness—1986 c 152: "The traffic safety commission shall undertake a study of the effectiveness of section 1 of this act and shall report its finding to the legislative transportation committee by January 1, 1989." [1986 c 152 § 3.]

Physicians—Immunity from liability regarding safety belts: RCW 4.24.235.

Seat belts and shoulder harnesses, required equipment: RCW 46.37.510.

46.61.990 Recodification of sections—Organization of chapter—Construction. Sections 1 through 52 and 54 through 86 of chapter 155, Laws of 1965 ex. sess. are added to chapter 12, Laws of 1961 and shall constitute a new chapter in Title 46 of the Revised Code of Washington and sections 54, 55, and 63 as herein amended and RCW 46.48.012, 46.48.014, 46.48.015, 46.48.016, 46.48.023, 46.48.025, 46.48.026, 46.48.041, 46.48.046, 46.48.050, 46.48.060, 46.48.080, 46.48.110, 46.48.120, 46.48.150, 46.48.160, 46.48.340, 46.56.030, 46.56.070, 46.56.100, 46.56.130, 46.56.135, 46.56.190, 46.56.200, 46.56.210, 46.56.220, 46.56.230, 46.56.240, 46.60.260, 46.60.270, 46.60.330, and 46.60.340 shall be recodified as and be a part of said chapter. The sections

of the new chapter shall be organized under the following captions: "OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS", "TRAFFIC SIGNS, SIGNALS AND MARKINGS", "DRIVING ON RIGHT SIDE OF ROADWAY—OVERTAKING AND PASSING—USE OF ROADWAY", "RIGHT OF WAY", "PEDESTRIANS' RIGHTS AND DUTIES", "TURNING AND STARTING AND SIGNALS ON STOPPING AND TURNING", "SPECIAL STOPS REQUIRED", "SPEED RESTRICTIONS", "RECKLESS DRIVING, DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR ANY DRUG, AND NEGLIGENT HOMICIDE BY VEHICLE", "STOPPING, STANDING AND PARKING", "MISCELLANEOUS RULES", and "OPERATION OF NONMOTORIZED VEHICLES". Such captions shall not constitute any part of the law. [1991 c 290 § 5; 1991 c 214 § 3; 1965 ex.s. c 155 § 92.]

Reviser's note: This section was amended by 1991 c 214 § 3 and by 1991 c 290 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Chapter 46.63

DISPOSITION OF TRAFFIC INFRACTIONS

Sections

46.63.020	Violations as traffic infractions—Exceptions.
46.63.151	Costs and attorney fees.

46.63.020 Violations as traffic infractions—Exceptions. Failure to perform any act required or the performance of any act prohibited by this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to traffic including parking, standing, stopping, and pedestrian offenses, is designated as a traffic infraction and may not be classified as a criminal offense, except for an offense contained in the following provisions of this title or a violation of an equivalent administrative regulation or local law, ordinance, regulation, or resolution:

(1) RCW 46.09.120(2) relating to the operation of a nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance;

(2) RCW 46.09.130 relating to operation of nonhighway vehicles;

(3) RCW 46.10.090(2) relating to the operation of a snowmobile while under the influence of intoxicating liquor or narcotics or habit-forming drugs or in a manner endangering the person of another;

(4) RCW 46.10.130 relating to the operation of snowmobiles;

(5) Chapter 46.12 RCW relating to certificates of ownership and registration;

(6) RCW 46.16.010 relating to initial registration of motor vehicles;

(7) RCW 46.16.011 relating to permitting unauthorized persons to drive;

(8) RCW 46.16.160 relating to vehicle trip permits;

(9) RCW 46.16.381 (6) or (8) relating to unauthorized use or acquisition of a special placard or license plate for disabled persons' parking;

(10) RCW 46.20.021 relating to driving without a valid driver's license;

(11) RCW 46.20.336 relating to the unlawful possession and use of a driver's license;

(12) RCW 46.20.342 relating to driving with a suspended or revoked license or status;

(13) RCW 46.20.410 relating to the violation of restrictions of an occupational driver's license;

(14) RCW 46.20.420 relating to the operation of a motor vehicle with a suspended or revoked license;

(15) RCW 46.20.750 relating to assisting another person to start a vehicle equipped with an ignition interlock device;

(16) RCW 46.25.170 relating to commercial driver's licenses;

(17) Chapter 46.29 RCW relating to financial responsibility;

(18) RCW 46.30.040 relating to providing false evidence of financial responsibility;

(19) RCW 46.37.435 relating to wrongful installation of sunscreening material;

(20) RCW 46.44.180 relating to operation of mobile home pilot vehicles;

(21) RCW 46.48.175 relating to the transportation of dangerous articles;

(22) RCW 46.52.010 relating to duty on striking an unattended car or other property;

(23) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(24) RCW 46.52.090 relating to reports by repairmen, storagemen, and appraisers;

(25) RCW 46.52.100 relating to driving under the influence of liquor or drugs;

(26) RCW 46.52.130 relating to confidentiality of the driving record to be furnished to an insurance company, an employer, and an alcohol/drug assessment or treatment agency;

(27) RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;

(28) RCW 46.55.035 relating to prohibited practices by tow truck operators;

(29) RCW 46.61.015 relating to obedience to police officers, flagmen, or fire fighters;

(30) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;

(31) RCW 46.61.022 relating to failure to stop and give identification to an officer;

(32) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;

(33) RCW 46.61.500 relating to reckless driving;

(34) RCW 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;

(35) RCW 46.61.520 relating to vehicular homicide by motor vehicle;

(36) RCW 46.61.522 relating to vehicular assault;

(37) RCW 46.61.525 relating to negligent driving;

(38) RCW 46.61.530 relating to racing of vehicles on highways;

(39) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;

(40) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;

(41) RCW 46.64.020 relating to nonappearance after a written promise;

(42) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;

(43) Chapter 46.65 RCW relating to habitual traffic offenders;

(44) Chapter 46.70 RCW relating to unfair motor vehicle business practices, except where that chapter provides for the assessment of monetary penalties of a civil nature;

(45) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;

(46) Chapter 46.80 RCW relating to motor vehicle wreckers;

(47) Chapter 46.82 RCW relating to driver's training schools;

(48) RCW 46.87.260 relating to alteration or forgery of a cab card, letter of authority, or other temporary authority issued under chapter 46.87 RCW;

(49) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW. [1991 c 339 § 27. Prior: 1990 c 250 § 59; 1990 c 95 § 3; prior: 1989 c 353 § 8; 1989 c 178 § 27; 1989 c 111 § 20; prior: 1987 c 388 § 11; 1987 c 247 § 6; 1987 c 244 § 55; 1987 c 181 § 2; 1986 c 186 § 3; prior: 1985 c 377 § 28; 1985 c 353 § 2; 1985 c 302 § 7; 1983 c 164 § 6; 1982 c 10 § 12; prior: 1981 c 318 § 2; 1981 c 19 § 1; 1980 c 148 § 7; 1979 ex.s. c 136 § 2.]

Severability—1990 c 250: See note following RCW 46.16.301.

Severability—**Effective date**—1989 c 353: See RCW 46.30.900 and 46.30.901.

Severability—**Effective dates**—1989 c 178: See RCW 46.25.900 and 46.25.901.

Severability—1987 c 388: See note following RCW 46.16.710.

Effective dates—1987 c 244: See note following RCW 46.12.020.

Severability—**Effective date**—1985 c 377: See RCW 46.55.900 and 46.55.902.

Severability—1982 c 10: See note following RCW 6.13.080.

Severability—1981 c 19: "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." [1981 c 19 § 7.]

Effective date—1980 c 148: See note following RCW 46.10.090.

Effective date—**Severability**—1979 ex.s. c 136: See notes following RCW 46.63.010.

Allowing unauthorized persons to drive: RCW 46.20.344.

46.63.151 Costs and attorney fees. Each party to a traffic infraction case is responsible for costs incurred by that party. No costs or attorney fees may be awarded to either party in a traffic infraction case, except as provided for in RCW 46.30.020(2). [1991 1st sp.s. c 25 § 3; 1981 c 19 § 4.]

Severability—1981 c 19: See note following RCW 46.63.020.

**Chapter 46.64
ENFORCEMENT**

Sections

46.64.020	Nonappearance after written promise—Penalty—Response by mail, when—Arrest, when.
46.64.048	Attempting, aiding, abetting, coercing, committing violations, punishable.

46.64.020 Nonappearance after written promise—Penalty—Response by mail, when—Arrest, when.

(1) The legislature finds that:

(a) Traffic laws are necessary for the safe and expeditious flow of motor vehicle traffic.

(b) For traffic laws to be effective, they must be judiciously and fairly enforced. This enforcement includes the issuance of notices of infraction and citations and the assessment of fines and penalties.

(c) The adjudication of notices of infraction through a written and signed promise to respond, and of citations through a written and signed promise to appear, as provided in this title is an integral and important part of the traffic law system.

(d) Approximately twenty percent of all people issued notices of infraction and citations violate their written and signed promise to respond or appear and obtain notices of failure to respond or appear on their driving records. Through their actions, these people are destroying the effectiveness of the traffic law system and undermining the department of licensing regulatory control of drivers' licenses.

(e) Notices of failure to respond or appear accumulated on a person's driving record shall be considered if they were issued after July 25, 1987.

(2) Any person violating his or her written and signed promise to appear in court or his or her written and signed promise to respond to a notice of traffic infraction, as provided in this title, is guilty of a misdemeanor regardless of the disposition of the charge upon which he or she was originally arrested or the disposition of the notice of infraction: **PROVIDED**, That a written promise to appear in court or a written promise to respond to a notice of traffic infraction may be complied with by an appearance by counsel: **PROVIDED FURTHER**, That a person charged under RCW 46.20.021 with driving with an expired driver's license may respond by mailing to the court within fifteen days of the violation, a copy of the person's currently valid driver's license. Any person who has been issued a notice of infraction pursuant to RCW 46.63.030(3) and who fails to respond as provided in this title is guilty of a misdemeanor regardless of the disposition of the notice of infraction.

(3) Any person who drives a motor vehicle within the state and has accumulated two or more notices of failure to appear or respond on his or her driving record maintained by the department of licensing in any five-year period as a result of noncompliance with the traffic laws in any jurisdiction or court within Washington, or in any jurisdiction or court within other states which are signatories with Washington in a nonresident violator compact or reciprocal agreement under chapter 46.23 RCW,

shall be guilty of failure to comply, a gross misdemeanor. A person is not subject to this subsection for failure to pay a fine for any pedestrian, bicycling, or parking offense.

Probable cause for arrest under this subsection is established by the officer obtaining, orally or in writing, information from the department of licensing that two or more notices of failure to appear or respond are on the person's driving record. For purposes of this chapter, failure to satisfy any penalties imposed under this title is considered equivalent to failure to appear or respond.

Venue for prosecution shall be in the court with jurisdiction in the area of apprehension. [1990 c 250 § 61; 1990 c 210 § 1; 1988 c 38 § 1; 1987 c 345 § 1; 1986 c 213 § 1; 1980 c 128 § 8; 1961 c 12 § 46.64.020. Prior: 1937 c 189 § 146; RRS § 6360-146.]

Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—Severability—1980 c 128: See notes following RCW 46.63.060.

46.64.048 Attempting, aiding, abetting, coercing, committing violations, punishable. Every person who commits, attempts to commit, conspires to commit, or aids or abets in the commission of any act declared by this title to be a traffic infraction or a crime, whether individually or in connection with one or more other persons or as principal, agent, or accessory, shall be guilty of such offense, and every person who falsely, fraudulently, forcefully, or willfully induces, causes, coerces, requires, permits or directs others to violate any provisions of this title is likewise guilty of such offense. [1990 c 250 § 60; 1961 c 12 § 46.56.210. Prior: 1937 c 189 § 149; RRS § 6360-149. Formerly RCW 46.61.695.]

Severability—1990 c 250: See note following RCW 46.16.301.

Chapter 46.65

WASHINGTON HABITUAL TRAFFIC OFFENDERS ACT

Sections

46.65.020	Habitual offender defined.
46.65.070	Period during which habitual offender not to be issued license.
46.65.090	Repealed.

46.65.020 Habitual offender defined. As used in this chapter, unless a different meaning is plainly required by the context, an habitual offender means any person, resident or nonresident, who has accumulated convictions or findings that the person committed a traffic infraction as defined in RCW 46.20.270, or, if a minor, has violations recorded with the department of licensing, for separate and distinct offenses as described in either subsection (1) or (2) below committed within a five-year period, as evidenced by the records maintained in the department of licensing: PROVIDED, That where more than one described offense is committed within a six-hour period such multiple offenses shall, on the first

such occasion, be treated as one offense for the purposes of this chapter:

(1) Three or more convictions, singularly or in combination, of the following offenses:

(a) Vehicular homicide as defined in RCW 46.61.520;

(b) Vehicular assault as defined in RCW 46.61.522;

(c) Driving or operating a motor vehicle while under the influence of intoxicants or drugs;

(d) Driving a motor vehicle while his or her license, permit, or privilege to drive has been suspended or revoked as defined in RCW 46.20.342(1)(b);

(e) Failure of the driver of any vehicle involved in an accident resulting in the injury or death of any person or damage to any vehicle which is driven or attended by any person to immediately stop such vehicle at the scene of such accident or as close thereto as possible and to forthwith return to and in every event remain at, the scene of such accident until he has fulfilled the requirements of RCW 46.52.020;

(f) Reckless driving as defined in RCW 46.61.500;

(g) Being in physical control of a motor vehicle while under the influence of intoxicating liquor or any drug as defined in RCW 46.61.504; or

(h) Attempting to elude a pursuing police vehicle as defined in RCW 46.61.024;

(2) Twenty or more convictions or findings that the person committed a traffic infraction for separate and distinct offenses, singularly or in combination, in the operation of a motor vehicle that are required to be reported to the department of licensing other than the offenses of driving with an expired driver's license and not having a driver's license in the operator's immediate possession. Such convictions or findings shall include those for offenses enumerated in subsection (1) of this section when taken with and added to those offenses described herein but shall not include convictions or findings for any nonmoving violation. No person may be considered an habitual offender under this subsection unless at least three convictions have occurred within the three hundred sixty-five days immediately preceding the last conviction.

The offenses included in subsections (1) and (2) of this section are deemed to include offenses under any valid town, city, or county ordinance substantially conforming to the provisions cited in subsections (1) and (2) or amendments thereto, and any federal law, or any law of another state, including subdivisions thereof, substantially conforming to the aforesaid state statutory provisions. [1991 c 293 § 7; 1983 c 164 § 7; 1981 c 188 § 1; 1979 ex.s. c 136 § 94; 1979 c 62 § 1; 1971 ex.s. c 284 § 4.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability—1979 c 62: "If any provision of this 1979 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." [1979 c 62 § 8.]

Severability—1971 ex.s. c 284: See note following RCW 46.65.010.

46.65.070 Period during which habitual offender not to be issued license. No license to operate motor vehicles

in Washington shall be issued to an habitual offender (1) for a period of five years from the date of the license revocation except as provided in RCW 46.65.080, and (2) until the privilege of such person to operate a motor vehicle in this state has been restored by the department of licensing as provided in this chapter. [1990 c 250 § 62; 1979 c 62 § 4; 1971 ex.s. c 284 § 9.]

Severability—1990 c 250: See note following RCW 46.16.301.

Severability—1979 c 62: See note following RCW 46.65.020.

Severability—1971 ex.s. c 284: See note following RCW 46.65.010.

46.65.090 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 46.68

DISPOSITION OF REVENUE

Sections	
46.68.030	Disposition of vehicle license fees.
46.68.035	Disposition of combined vehicle licensing fees.
46.68.090	Distribution of state-wide taxes. (Effective until April 1, 1992.)
46.68.090	Distribution of state-wide taxes. (Effective April 1, 1992.)
46.68.095	Distribution of additional state-wide taxes.
46.68.100	Allocation of net tax amount in motor vehicle fund.
46.68.110	Distribution of amount allocated to cities and towns. (Effective until April 1, 1992.)
46.68.110	Distribution of amount allocated to cities and towns. (Effective April 1, 1992.)
46.68.120	Distribution of amount allocated to counties—Generally.
46.68.124	Distribution of amount to counties—Population, road cost, money need, computed—Allocation percentage adjustment, when.
46.68.210	Puyallup tribal settlement account.

46.68.030 Disposition of vehicle license fees. Except for proceeds from fees for vehicle licensing for vehicles paying such fees under RCW 46.16.070 and 46.16.085, and as otherwise provided for in chapter 46.16 RCW, all fees received by the director for vehicle licenses under the provisions of chapter 46.16 RCW shall be forwarded to the state treasurer, accompanied by a proper identifying detailed report, and be deposited to the credit of the motor vehicle fund, except that the proceeds from the vehicle license fee and renewal license fee shall be deposited by the state treasurer as hereinafter provided. After July 1, 1981, that portion of each vehicle license fee in excess of \$7.40 and that portion of each renewal license fee in excess of \$3.40 shall be deposited in the state patrol highway account in the motor vehicle fund, hereby created. Vehicle license fees, renewal license fees, and all other funds in the state patrol highway account shall be for the sole use of the Washington state patrol for highway activities of the Washington state patrol, subject to proper appropriations and reappropriations therefor, for any fiscal biennium after June 30, 1981, and twenty-seven and three-tenths percent of the proceeds from \$7.40 of each vehicle license fee and \$3.40 of each renewal license fee shall be deposited each biennium in the Puget Sound ferry operations account. Any

remaining amounts of vehicle license fees and renewal license fees that are not deposited in the Puget Sound ferry operations account shall be deposited in the motor vehicle fund. [1990 c 42 § 109; 1985 c 380 § 20. Prior: 1983 c 15 § 23; 1983 c 3 § 122; 1981 c 342 § 9; 1973 c 103 § 3; 1971 ex.s. c 231 § 11; 1971 ex.s. c 91 § 1; 1969 ex.s. c 281 § 25; 1969 c 99 § 8; 1965 c 25 § 2; 1961 ex.s. c 7 § 17; 1961 c 12 § 46.68.030; prior: 1957 c 105 § 2; 1955 c 259 § 4; 1947 c 164 § 15; 1937 c 188 § 40; Rem. Supp. 1947 § 6312-40.]

Purpose—**Headings**—**Severability**—**Effective dates**—**Application**—**Implementation**—1990 c 42: See notes following RCW 82.36.025.

Effective date—1986 c 18; 1985 c 380: See RCW 46.87.901.

Severability—1985 c 380: See RCW 46.87.900.

Severability—1983 c 15: See RCW 47.64.910.

Effective date—**Severability**—1981 c 342: See notes following RCW 82.36.010.

Refund of mobile home identification tag fees: "The department of motor vehicles shall refund all moneys collected in 1973 for mobile home identification tags. Such refunds shall be made to those persons who have purchased such tags. The department shall adopt rules pursuant to chapter 34.04 RCW to comply with the provisions of this section." [1973 c 103 § 4.]

Effective date—1971 ex.s. c 231: See note following RCW 46.01.130.

Effective date—1965 c 25: See note following RCW 46.16.060.

46.68.035 Disposition of combined vehicle licensing fees. All proceeds from combined vehicle licensing fees received by the director for vehicles licensed under RCW 46.16.070 and 46.16.085 shall be forwarded to the state treasurer to be distributed into accounts according to the following method:

(1) The sum of two dollars for each vehicle shall be deposited into the highway safety fund, except that for each vehicle registered by a county auditor or agent to a county auditor pursuant to RCW 46.01.140, the sum of two dollars shall be credited to the current county expense fund.

(2) The remainder shall be distributed as follows:

(a) 25.862 percent shall be deposited into the state patrol highway account of the motor vehicle fund;

(b) 1.661 percent shall be deposited into the Puget Sound ferry operations account of the motor vehicle fund; and

(c) The remaining proceeds shall be deposited into the motor vehicle fund. [1990 c 42 § 106; 1989 c 156 § 4; 1985 c 380 § 21.]

Purpose—**Headings**—**Severability**—**Effective dates**—**Application**—**Implementation**—1990 c 42: See notes following RCW 82.36.025.

Application—1989 c 156: See note following RCW 46.16.070.

Effective date—1986 c 18; 1985 c 380: See RCW 46.87.901.

Severability—1985 c 380: See RCW 46.87.900.

46.68.090 Distribution of state-wide taxes. (Effective until April 1, 1992.) (1) All moneys that have accrued or may accrue to the motor vehicle fund from the motor vehicle fuel tax and special fuel tax shall be first expended for the following purposes:

(a) For payment of refunds of motor vehicle fuel tax and special fuel tax that has been paid and is refundable as provided by law;

(b) For payment of amounts to be expended pursuant to appropriations for the administrative expenses of the offices of state treasurer, state auditor, and the department of licensing of the state of Washington in the administration of the motor vehicle fuel tax and the special fuel tax, which sums shall be distributed monthly;

(c) For distribution to the rural arterial trust account in the motor vehicle fund, an amount as provided in RCW 82.36.025(2) and 46.68.095(3);

(d) For distribution to the urban arterial trust account in the motor vehicle fund, an amount as provided in RCW 82.36.025(3);

(e) For distribution to the transportation improvement account in the motor vehicle fund, an amount as provided in RCW 46.68.095(1);

(f) For distribution to the special category C account, hereby created in the motor vehicle fund, an amount as provided in RCW 46.68.095(2);

(g) For distribution to the county arterial preservation account, hereby created in the motor vehicle fund, an amount as provided in RCW 46.68.095(4);

(h) For distribution to the motor vehicle fund to be allocated to cities and towns as provided in RCW 46.68.110, an amount as provided in RCW 46.68.095(5);

(i) For distribution to the motor vehicle fund to be allocated to counties as provided in RCW 46.68.120, an amount as provided in RCW 46.68.095(6);

(j) For expenditure for highway purposes of the state as defined in RCW 46.68.130, an amount as provided in RCW 82.36.025(4) and 46.68.095(7).

(2) The amount accruing to the motor vehicle fund by virtue of the motor vehicle fuel tax and the special fuel tax and remaining after payments, distributions, and expenditures as provided in this section shall, for the purposes of this chapter, be referred to as the "net tax amount." [1990 c 42 § 102; 1983 1st ex.s. c 49 § 21; 1979 c 158 § 184; 1977 ex.s. c 317 § 8; 1967 c 32 § 74; 1961 ex.s. c 7 § 5; 1961 c 12 § 46.68.090. Prior: 1943 c 115 § 3; 1939 c 181 § 2; Rem. Supp. 1943 § 6600-1d; 1937 c 208 §§ 2, part, 3, part.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900, 36.79.901.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

Rural arterial trust account: RCW 36.79.020.

Urban arterial trust account: RCW 47.26.080.

46.68.090 Distribution of state-wide taxes. (Effective April 1, 1992.) (1) All moneys that have accrued or may accrue to the motor vehicle fund from the motor vehicle fuel tax and special fuel tax shall be first expended for the following purposes:

(a) For payment of refunds of motor vehicle fuel tax and special fuel tax that has been paid and is refundable as provided by law;

(b) For payment of amounts to be expended pursuant to appropriations for the administrative expenses of the offices of state treasurer, state auditor, and the department of licensing of the state of Washington in the administration of the motor vehicle fuel tax and the special fuel tax, which sums shall be distributed monthly;

(c) From April 1, 1992, through March 31, 1996, for distribution to the transfer relief account, hereby created in the motor vehicle fund, an amount not to exceed three hundred twenty-five one-thousandths of one percent;

(d) For distribution to the rural arterial trust account in the motor vehicle fund, an amount as provided in RCW 82.36.025(2) and 46.68.095(3);

(e) For distribution to the urban arterial trust account in the motor vehicle fund, an amount as provided in RCW 82.36.025(3);

(f) For distribution to the transportation improvement account in the motor vehicle fund, an amount as provided in RCW 46.68.095(1);

(g) For distribution to the special category C account, hereby created in the motor vehicle fund, an amount as provided in RCW 46.68.095(2);

(h) For distribution to the county arterial preservation account, hereby created in the motor vehicle fund, an amount as provided in RCW 46.68.095(4);

(i) For distribution to the motor vehicle fund to be allocated to cities and towns as provided in RCW 46.68.110, an amount as provided in RCW 46.68.095(5);

(j) For distribution to the motor vehicle fund to be allocated to counties as provided in RCW 46.68.120, an amount as provided in RCW 46.68.095(6);

(k) For expenditure for highway purposes of the state as defined in RCW 46.68.130, an amount as provided in RCW 82.36.025(4) and 46.68.095(7).

(2) The amount accruing to the motor vehicle fund by virtue of the motor vehicle fuel tax and the special fuel tax and remaining after payments, distributions, and expenditures as provided in this section shall, for the purposes of this chapter, be referred to as the "net tax amount." [1991 c 342 § 56; 1990 c 42 § 102; 1983 1st ex.s. c 49 § 21; 1979 c 158 § 184; 1977 ex.s. c 317 § 8; 1967 c 32 § 74; 1961 ex.s. c 7 § 5; 1961 c 12 § 46.68.090. Prior: 1943 c 115 § 3; 1939 c 181 § 2; Rem. Supp. 1943 § 6600-1d; 1937 c 208 §§ 2, part, 3, part.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900, 36.79.901.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

Rural arterial trust account: RCW 36.79.020.

Urban arterial trust account: RCW 47.26.080.

46.68.095 Distribution of additional state-wide taxes. All moneys that have accrued or may accrue to the motor vehicle fund from the motor vehicle fuel tax and special fuel tax imposed by RCW 82.36.025(5) shall be distributed monthly by the state treasurer in the following proportions:

(1) One and one-half cents shall be deposited in the transportation improvement account and expended in accordance with RCW 47.26.084.

(2) From April 1, 1991, seventy-five one-hundredths of one cent shall be deposited in the special category C account in the motor vehicle fund for special category C projects. Special category C projects are category C projects as defined in RCW 47.05.030(3) that, due to high cost only, will require bond financing to complete construction.

The following criteria, listed in order of priority, shall be used in determining which special category C projects have the highest priority:

- (a) Accident experience; and
- (b) Fatal accident experience; and
- (c) Capacity to move people and goods safely and at reasonable speeds without undue congestion; and
- (d) Continuity of development of the highway transportation network.

Moneys deposited in the special category C account in the motor vehicle fund may be used for payment of debt service on bonds the proceeds of which are used to finance special category C projects under this subsection.

(3) Twenty-five one-hundredths of one cent shall be deposited in the rural arterial trust account in the motor vehicle fund.

(4) Forty-five one-hundredths of one cent shall be deposited in the county arterial preservation account. These funds shall be distributed by the county road administration board to counties in proportions corresponding to the number of paved arterial lane miles in the unincorporated area of each county and shall be used for improvements to sustain the structural, safety, and operational integrity of county arterials. The county road administration board shall adopt reasonable rules and develop policies to implement this program and to assure that a pavement management system is used.

(5) One-half of one cent shall be allocated to cities and towns as provided in RCW 46.68.110.

(6) From April 1, 1990, through March 31, 1991, thirty one-hundredths of one cent and after March 31, 1991, fifty-five one-hundredths of one cent shall be allocated to counties as provided in RCW 46.68.120.

(7) One cent shall be deposited in the motor vehicle fund and shall be expended for highway purposes of the state as defined in RCW 46.68.130. [1990 c 42 § 103.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Distributions to local governments: See 1990 c 298 § 37.

46.68.100 Allocation of net tax amount in motor vehicle fund. From the net tax amount in the motor vehicle fund there shall be paid monthly as funds accrue the following sums:

(1) To the cities and towns, to be distributed as provided by RCW 46.68.110, sums equal to six and ninety-two hundredths percent of the net tax amount;

(2) To the cities and towns, to be expended as provided by RCW 46.68.115, sums equal to four and sixty-one hundredths percent of the net tax amount;

(3) To the counties, sums equal to twenty-two and seventy-eight hundredths percent of the net tax amount (a) out of which there shall be distributed from time to time, as directed by the department of transportation, those sums as may be necessary to carry out the provisions of RCW 47.56.725, and (b) less any amounts appropriated to the county road administration board to implement the provisions of RCW 47.56.725(4), with the balance of such county share to be distributed monthly as the same accrues for distribution in accordance with RCW 46.68.120;

(4) To the urban arterial trust account in the motor vehicle fund, sums equal to seven and twelve hundredths percent of the net tax amount;

(5) To the state, to be expended as provided by RCW 46.68.130, sums equal to forty-five and twenty-six hundredths percent of the net tax amount;

(6) To the state, to be expended as provided by RCW 46.68.150 as now or hereafter amended, sums equal to six and ninety-five hundredths percent of the net tax amount;

(7) To the Puget Sound capital construction account in the motor vehicle fund sums equal to three and twenty-one hundredths percent of the net tax amount;

(8) To the Puget Sound ferry operations account in the motor vehicle fund sums equal to three and fifteen hundredths percent of the net tax amount.

Nothing in this section or in RCW 46.68.090 or 46.68.130 may be construed so as to violate any terms or conditions contained in any highway construction bond issues now or hereafter authorized by statute and whose payment is by such statute pledged to be paid from any excise taxes on motor and special vehicle fuels. [1991 c 310 § 2; 1986 c 66 § 1; 1984 c 7 § 73; 1977 ex.s. c 317 § 9; 1977 c 51 § 1; 1975-'76 2nd ex.s. c 57 § 1; 1973 1st ex.s. c 124 § 1; 1972 ex.s. c 24 § 2; 1970 ex.s. c 85 § 4; 1967 ex.s. c 145 § 79; 1967 ex.s. c 83 § 8; 1961 ex.s. c 7 § 6; 1961 c 12 § 46.68.100. Prior: 1959 ex.s. c 4 § 1; 1957 c 271 § 3; 1957 c 175 § 10; 1943 c 83 § 1; 1939 c 181 § 3; Rem. Supp. 1943 § 6600-1e; 1937 c 208 §§ 2, part, 3, part.]

Effective date—1986 c 66: "This act shall take effect July 1, 1987. The secretary of transportation may immediately take such steps as are necessary to ensure that this act is implemented on its effective date." [1986 c 66 § 14.]

Severability—1984 c 7: See note following RCW 47.01.141.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

Effective date—1977 c 51: "This 1977 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 on July 1, 1977." [1977 c 51 § 4.]

Severability—1977 c 51: "If any provision of this 1977 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." [1977 c 51 § 3.]

Effective date—1970 ex.s. c 85: See note following RCW 47.60.500.

Severability—Effective dates—1967 ex.s. c 83: See RCW 47.26.900 and 47.26.910.

46.68.110 Distribution of amount allocated to cities and towns. (Effective until April 1, 1992.) Funds credited to the incorporated cities and towns of the state as

set forth in subdivision (1) of RCW 46.68.100 shall be subject to deduction and distribution as follows:

(1) One and one-half percent of such sums shall be deducted monthly as such sums are credited and set aside for the use of the department of transportation for the supervision of work and expenditures of such incorporated cities and towns on the city and town streets thereof, including the supervision and administration of federal-aid programs for which the department of transportation has responsibility: PROVIDED, That any moneys so retained and not expended shall be credited in the succeeding biennium to the incorporated cities and towns in proportion to deductions herein made;

(2) Thirty-three one-hundredths of one percent of such funds shall be deducted monthly, as such funds accrue, and set aside for the use of the department of transportation for the purpose of funding the cities' share of the costs of highway jurisdiction studies and other studies. Any funds so retained and not expended shall be credited in the succeeding biennium to the cities in proportion to the deductions made;

(3) The balance remaining to the credit of incorporated cities and towns after such deduction shall be apportioned monthly as such funds accrue among the several cities and towns within the state ratably on the basis of the population last determined by the office of financial management. [1991 1st sp.s. c 15 § 46; 1989 1st ex.s. c 6 § 41; 1987 1st ex.s. c 10 § 37; 1985 c 460 § 32; 1979 c 151 § 161; 1975 1st ex.s. c 100 § 1; 1961 ex.s. c 7 § 7; 1961 c 12 § 46.68.110. Prior: 1957 c 175 § 11; 1949 c 143 § 1; 1943 c 83 § 2; 1941 c 232 § 1; 1939 c 181 § 4; Rem. Supp. 1949 § 6600-3a; 1937 c 208 §§ 2, part, 3, part.]

Construction—Severability—1991 1st sp.s. c 15: "The appropriations of moneys and the designation of funds and accounts by this and other acts of the 1991 legislature shall be construed in a manner consistent with legislation enacted by the 1985, 1987, and 1989 legislatures to conform state funds and accounts with generally accepted accounting principles. 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." [1991 1st sp.s. c 15 § 69.]

Severability—1989 1st sp.s. c 6: "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." [1989 1st ex.s. c 6 § 75.]

Severability—1987 1st ex.s. c 10: "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." [1987 1st ex.s. c 10 § 60.]

Severability—1985 c 460: "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." [1985 c 460 § 42.]

Expense of cost-audit examination of city and town street records payable from funds withheld under RCW 46.68.110(1): RCW 35.76.050.

Population determination, office of financial management: Chapter 43.62 RCW.

46.68.110 Distribution of amount allocated to cities and towns. (Effective April 1, 1992.) Funds credited to the incorporated cities and towns of the state as set forth in subdivision (1) of RCW 46.68.100 shall be subject to deduction and distribution as follows:

(1) One and one-half percent of such sums shall be deducted monthly as such sums are credited and set aside for the use of the department of transportation for the supervision of work and expenditures of such incorporated cities and towns on the city and town streets thereof, including the supervision and administration of federal-aid programs for which the department of transportation has responsibility: PROVIDED, That any moneys so retained and not expended shall be credited in the succeeding biennium to the incorporated cities and towns in proportion to deductions herein made;

(2) Thirty-three one-hundredths of one percent of such funds shall be deducted monthly, as such funds accrue, and set aside for the use of the department of transportation for the purpose of funding the cities' share of the costs of highway jurisdiction studies and other studies. Any funds so retained and not expended shall be credited in the succeeding biennium to the cities in proportion to the deductions made;

(3) From April 1, 1992, two percent of such funds shall be deducted monthly, as such funds accrue, to be deposited in the city hardship assistance account, hereby created in the motor vehicle fund, to implement the city hardship assistance program, as provided in RCW 47.26.164;

(4) The balance remaining to the credit of incorporated cities and towns after such deduction shall be apportioned monthly as such funds accrue among the several cities and towns within the state ratably on the basis of the population last determined by the office of financial management. [1991 1st sp.s. c 15 § 46; 1991 c 342 § 59; 1989 1st ex.s. c 6 § 41; 1987 1st ex.s. c 10 § 37; 1985 c 460 § 32; 1979 c 151 § 161; 1975 1st ex.s. c 100 § 1; 1961 ex.s. c 7 § 7; 1961 c 12 § 46.68.110. Prior: 1957 c 175 § 11; 1949 c 143 § 1; 1943 c 83 § 2; 1941 c 232 § 1; 1939 c 181 § 4; Rem. Supp. 1949 § 6600-3a; 1937 c 208 §§ 2, part, 3, part.]

Reviser's note: This section was amended by 1991 c 342 § 59 and by 1991 1st sp.s. c 15 § 46, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Construction—Severability—1991 1st sp.s. c 15: "The appropriations of moneys and the designation of funds and accounts by this and other acts of the 1991 legislature shall be construed in a manner consistent with legislation enacted by the 1985, 1987, and 1989 legislatures to conform state funds and accounts with generally accepted accounting principles. 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." [1991 1st sp.s. c 15 § 69.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

Severability—1989 1st ex.s. c 6: "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." [1989 1st ex.s. c 6 § 75.]

Severability—1987 1st ex.s. c 10: "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." [1987 1st ex.s. c 10 § 60.]

Severability—1985 c 460: "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." [1985 c 460 § 42.]

Expense of cost-audit examination of city and town street records payable from funds withheld under RCW 46.68.110(1): RCW 35.76.050.

Population determination, office of financial management: Chapter 43.62 RCW.

46.68.120 Distribution of amount allocated to counties—Generally. Funds to be paid to the counties of the state shall be subject to deduction and distribution as follows:

(1) One and one-half percent of such funds shall be deducted monthly as such funds accrue and set aside for the use of the department of transportation and the county road administration board for the supervision of work and expenditures of such counties on the county roads thereof, including the supervision and administration of federal-aid programs for which the department of transportation has responsibility: PROVIDED, That any funds so retained and not expended shall be credited in the succeeding biennium to the counties in proportion to deductions herein made;

(2) All sums required to be repaid to counties composed entirely of islands shall be deducted;

(3) Thirty-three one-hundredths of one percent of such funds shall be deducted monthly, as such funds accrue, and set aside for the use of the department of transportation for the purpose of funding the counties' share of the costs of highway jurisdiction studies and other studies. Any funds so retained and not expended shall be credited in the succeeding biennium to the counties in proportion to the deductions made;

(4) The balance of such funds remaining to the credit of counties after such deductions shall be paid to the several counties monthly, as such funds accrue, in accordance with RCW 46.68.122 and 46.68.124. [1991 1st sp.s. c 15 § 47; 1991 c 342 § 64; 1989 1st ex.s. c 6 § 42; 1987 1st ex.s. c 10 § 38; 1985 c 460 § 33; 1985 c 120 § 1; 1982 c 33 § 1; 1980 c 87 § 44; 1979 c 158 § 185; 1977 ex.s. c 151 § 42; 1975 1st ex.s. c 100 § 2; 1973 1st ex.s. c 195 § 47; 1972 ex.s. c 103 § 1; 1967 c 32 § 75; 1965 ex.s. c 120 § 12; 1961 c 12 § 46.68.120. Prior: 1957 c 109 § 1; 1955 c 243 § 1; 1949 c 143 § 2; 1945 c 260 § 1; 1943 c 83 § 3; 1939 c 181 § 5; Rem. Supp. 149 § 6600-2a.]

Construction—Severability—1991 1st sp.s. c 15: See note following RCW 46.68.110.

Effective dates—1991 c 342: See note following RCW 47.26.167.

Severability—1989 1st ex.s. c 6: See note following RCW 46.68.110.

Severability—1987 1st ex.s. c 10: See note following RCW 46.68.110.

Severability—1985 c 460: See note following RCW 46.68.110.

Federal requirements—Severability—1977 ex.s. c 151: See RCW 47.98.070, 47.98.080.

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

Severability—1972 ex.s. c 103: See note following RCW 47.30.030.

County road administration board—Expenses to be paid from motor vehicle fund—Disbursement procedure: RCW 36.78.110.

46.68.124 Distribution of amount to counties—Population, road cost, money need, computed—Allocation percentage adjustment, when. (1) The equivalent

population for each county shall be computed as the sum of the population residing in the county's unincorporated area plus twenty-five percent of the population residing in the county's incorporated area. Population figures required for the computations in this subsection shall be certified by the director of the office of financial management on or before July 1st of each odd-numbered year.

(2) The total annual road cost for each county shall be computed as the sum of one twenty-fifth of the total estimated county road replacement cost, plus the total estimated annual maintenance cost. Appropriate costs for bridges and ferries shall be included. The county road administration board shall be responsible for establishing a uniform system of roadway categories for both maintenance and construction and also for establishing a single state-wide cost per mile rate for each roadway category. The total annual cost for each county will be based on the established state-wide cost per mile and associated mileage for each category. The mileage to be used for these computations shall be as shown in the county road log as maintained by the county road administration board as of July 1, 1985, and each two years thereafter. Each county shall be responsible for submitting changes, corrections, and deletions as regards the county road log to the county road administration board. Such changes, corrections, and deletions shall be subject to verification and approval by the county road administration board prior to inclusion in the county road log.

(3) The money need factor for each county shall be the county's total annual road cost less the following four amounts:

(a) One-half the sum of the actual county road tax levied upon the valuation of all taxable property within the county road districts pursuant to RCW 36.82.040 for the two calendar years next preceding the year of computation of the allocation amounts as certified by the department of revenue;

(b) One-half the sum of all funds received by the county road fund from the federal forest reserve fund pursuant to RCW 28A.520.010 and 28A.520.020 during the two calendar years next preceding the year of computation of the allocation amounts as certified by the state treasurer;

(c) One-half the sum of timber excise taxes received by the county road fund pursuant to chapter 84.33 RCW in the two calendar years next preceding the year of computation of the allocation amounts as certified by the state treasurer;

(d) One-half the sum of motor vehicle license fees and motor vehicle and special fuel taxes refunded to the county, pursuant to RCW 46.68.080 during the two calendar years next preceding the year of computation of the allocation amounts as certified by the state treasurer.

(4) The state treasurer and the department of revenue shall furnish to the county road administration board the information required by subsection (3) of this section on or before July 1st of each odd-numbered year.

(5) The county road administration board, shall compute and provide to the counties the allocation factors of

the several counties on or before September 1st of each year based solely upon the sources of information herein before required: PROVIDED, That the allocation factor shall be held to a level not more than five percent above or five percent below the allocation factor in use during the previous calendar year. Upon computation of the actual allocation factors of the several counties, the county road administration board shall provide such factors to the state treasurer to be used in the computation of the counties' fuel tax allocation for the succeeding calendar year. The state treasurer shall adjust the fuel tax allocation of each county on January 1st of every year based solely upon the information provided by the county road administration board. [1990 c 33 § 586. Prior: 1985 c 120 § 2; 1985 c 7 § 113; 1982 c 33 § 3.]

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

46.68.210 Puyallup tribal settlement account. (1) The Puyallup tribal settlement account is hereby created in the motor vehicle fund. All moneys designated by the "Agreement between the Puyallup Tribe of Indians, local governments in Pierce county, the state of Washington, the United States of America, and certain private property owners," dated August 27, 1988, (the "agreement") for use by the department of transportation on the Blair project as described in the agreement shall be deposited into the account, including but not limited to federal appropriations for the Blair project, and appropriations contained in section 34, chapter 6, Laws of 1989 1st ex. sess. and section 709, chapter 19, Laws of 1989 1st ex. sess.

(2) All moneys deposited into the account shall be expended by the department of transportation pursuant to appropriation solely for the Blair project as described in the agreement. [1991 1st sp.s. c 13 § 104; 1990 c 42 § 411.]

Effective dates—**Severability**—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Purpose—**Headings**—**Severability**—**Effective dates**—**Application**—**Implementation**—1990 c 42: See notes following RCW 82.36.025.

Chapter 46.70

UNFAIR BUSINESS PRACTICES—DEALERS' LICENSES

Sections	
46.70.023	Place of business.
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46.70.061	Fees—Disposition.
46.70.083	Expiration of license—Application for renewal—Certification of established place of business.
46.70.085	Dealers and manufacturers licenses—Staggered renewal.
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46.70.023 Place of business. (1) An "established place of business" requires a permanent, enclosed commercial building located within the state of Washington easily accessible at all reasonable times. An established place of business shall have an improved display area of not less than three thousand square feet in or immediately adjoining the building, or a display area large enough to display six or more vehicles of the type the dealer is licensed to sell, whichever area is larger. The business of a vehicle dealer, including the display and repair of vehicles, may be lawfully carried on at an established place of business in accordance with the terms of all applicable building code, zoning, and other land-use regulatory ordinances. The dealer shall keep the building open to the public so that they may contact the vehicle dealer or the dealer's salespersons at all reasonable times. The books, records, and files necessary to conduct the business shall be kept and maintained at that place. The established place of business shall display an exterior sign with the business name and nature of the business, such as auto sales, permanently affixed to the land or building, with letters clearly visible to the major avenue of traffic. In no event may a room or rooms in a hotel, rooming house, or apartment house building or part of a single or multiple-unit dwelling house be considered an "established place of business" unless the ground floor of such a dwelling is devoted principally to and occupied for commercial purposes and the dealer offices are located on the ground floor. A mobile office or mobile home may be used as an office if it is connected to utilities and is set up in accordance with state law. This subsection does not apply to auction companies that do not own vehicle inventory or sell vehicles from an auction yard.

(2) An auction company shall have office facilities within the state. The books, records, and files necessary to conduct the business shall be maintained at the office facilities. All storage facilities for inventory shall be listed with the department, and shall meet local zoning and land use ordinances. An auction company shall maintain a telecommunications system.

(3) Auction companies shall post their vehicle dealer license at each auction where vehicles are offered, and shall provide the department with the address of the auction at least three days before the auction.

(4) If a dealer maintains a place of business at more than one location or under more than one name in this state, he or she shall designate one location as the principal place of business of the firm, one name as the principal name of the firm, and all other locations or names as subagencies. A subagency license is required for each and every subagency: PROVIDED, That the department may grant an exception to the subagency requirement in the specific instance where a licensed dealer is unable to locate their used vehicle sales facilities adjacent to or at the established place of business. This exception shall be granted and defined under the promulgation of rules consistent with the Administrative Procedure Act.

(5) All vehicle dealers shall maintain ownership or leasehold throughout the license year of the real property from which they do business. The dealer shall provide the department with evidence of ownership or leasehold whenever the ownership changes or the lease is terminated.

(6) A subagency shall comply with all requirements of an established place of business, except that auction companies shall comply with the requirements in subsection (2) of this section.

(7) A temporary subagency shall meet all local zoning and building codes for the type of merchandising being conducted. The dealer license certificate shall be posted at the location. No other requirements of an established place of business apply to a temporary subagency. Auction companies are not required to obtain a temporary subagency license.

(8) A wholesale vehicle dealer shall have office facilities in a commercial building within this state, and all storage facilities for inventory shall be listed with the department, and shall meet local zoning and land use ordinances. A wholesale vehicle dealer shall maintain a telecommunications system. An exterior sign visible from the nearest street shall identify the business name and the nature of business. A wholesale dealer need not maintain a display area as required in this section. When two or more vehicle dealer businesses share a location, all records, office facilities, and inventory, if any, must be physically segregated and clearly identified.

(9) A retail vehicle dealer shall be open during normal business hours, maintain office and display facilities in a commercially zoned location or in a location complying with all applicable building and land use ordinances, and maintain a business telephone listing in the local directory. When two or more vehicle dealer businesses share a location, all records, office facilities, and inventory shall be physically segregated and clearly identified.

(10) A listing dealer need not have a display area if the dealer does not physically maintain any vehicles for display.

(11) A subagency license is not required for a mobile home dealer to display an on-site display model, a consigned mobile home not relocated from its site, or a repossessed mobile home if sales are handled from a principal place of business or subagency. A mobile home dealer shall identify on-site display models, repossessed mobile homes, and those consigned at their sites with a sign that includes the dealer's name and telephone number.

(12) Every vehicle dealer shall advise the department of the location of each and every place of business of the firm and the name or names under which the firm is doing business at such location or locations. If any name or location is changed, the dealer shall notify the department of such change within ten days. The license issued by the department shall reflect the name and location of the firm and shall be posted in a conspicuous place at that location by the dealer.

(13) A vehicle dealer's license shall upon the death or incapacity of an individual vehicle dealer authorize the

personal representative of such dealer, subject to payment of license fees, to continue the business for a period of six months from the date of the death or incapacity. [1991 c 339 § 28; 1989 c 301 § 2; 1986 c 241 § 4.]

46.70.029 Listing dealers, transaction of business. Listing dealers shall transact dealer business by obtaining a listing agreement for sale, and the buyer's purchase of the mobile home shall be handled as dealer inventory. All funds from the purchaser shall be placed in a trust account until the sale is completed, except that the dealer shall pay any outstanding liens against the mobile home from these funds. Where title has been delivered to the purchaser, the listing dealer shall pay the amount due a seller within ten days after the sale of a listed mobile home. A complete account of all funds received and disbursed shall be given to the seller or consignor after the sale is completed. The sale of listed mobile homes imposes the same duty under RCW 46.12.120 on the listing dealer as any other sale. [1990 c 250 § 63; 1986 c 241 § 6.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.70.041 Application for license—Contents. (1) Every application for a vehicle dealer license shall contain the following information to the extent it applies to the applicant:

(a) Proof as the department may require concerning the applicant's identity, including but not limited to his fingerprints, the honesty, truthfulness, and good reputation of the applicant for the license, or of the officers of a corporation making the application;

(b) The applicant's form and place of organization including if the applicant is a corporation, proof that the corporation is licensed to do business in this state;

(c) The qualification and business history of the applicant and any partner, officer, or director;

(d) The applicant's financial condition or history including a bank reference and whether the applicant or any partner, officer, or director has ever been adjudged bankrupt or has any unsatisfied judgment in any federal or state court;

(e) Whether the applicant has been adjudged guilty of a crime which directly relates to the business for which the license is sought and the time elapsed since the conviction is less than ten years, or has suffered any judgment within the preceding five years in any civil action involving fraud, misrepresentation, or conversion and in the case of a corporation or partnership, all directors, officers, or partners;

(f) A business telephone with a listing in the local directory;

(g) The name or names of new vehicles the vehicle dealer wishes to sell;

(h) The names and addresses of each manufacturer from whom the applicant has received a franchise;

(i) Whether the applicant intends to sell used vehicles, and if so, whether he has space available for servicing and repairs;

(j) A certificate by a representative of the department, that the applicant's principal place of business and

each subagency business location in the state of Washington meets the location requirements as required by this chapter. The certificate shall include proof of the applicant's ownership or lease of the real property where the applicant's principal place of business is established;

(k) A copy of a current service agreement with a manufacturer, or distributor for a foreign manufacturer, requiring the applicant, upon demand of any customer receiving a new vehicle warranty to perform or arrange for, within a reasonable distance of his established place of business, the service repair and replacement work required of the manufacturer or distributor by such vehicle warranty. This requirement applies only to applicants seeking to sell, to exchange, to offer, to auction, to solicit, or to advertise new or current-model vehicles with factory or distributor warranties;

(l) The class of vehicles the vehicle dealer will be buying, selling, listing, exchanging, offering, brokering, leasing with an option to purchase, auctioning, soliciting, or advertising, and which classification or classifications the dealer wishes to be designated as;

(m) Any other information the department may reasonably require.

(2) If the applicant is a manufacturer the application shall contain the following information to the extent it is applicable to the applicant:

(a) The name and address of the principal place of business of the applicant and, if different, the name and address of the Washington state representative of the applicant;

(b) The name or names under which the applicant will do business in the state of Washington;

(c) Evidence that the applicant is authorized to do business in the state of Washington;

(d) The name or names of the vehicles that the licensee manufactures;

(e) The name or names and address or addresses of each and every distributor, factory branch, and factory representative;

(f) The name or names and address or addresses of resident employees or agents to provide service or repairs to vehicles located in the state of Washington only under the terms of any warranty attached to new or unused vehicles manufactured, unless such manufacturer requires warranty service to be performed by all of its dealers pursuant to a current service agreement on file with the department;

(g) Any other information the department may reasonably require. [1990 c 250 § 64; 1986 c 241 § 8; 1979 c 158 § 187; 1977 ex.s. c 125 § 2; 1973 1st ex.s. c 132 § 5; 1971 ex.s. c 74 § 1; 1969 ex.s. c 63 § 2; 1967 ex.s. c 74 § 6.]

Severability—1990 c 250: See note following RCW 46.16.301.
Requirements of "established place of business": RCW 46.70.023.

46.70.061 Fees—Disposition. (1) The annual fees for original licenses issued for twelve consecutive months from the date of issuance under this chapter shall be:

(a) Vehicle dealers, principal place of business for each and every license classification: Five hundred dollars;

(b) Vehicle dealers, each subagency: Fifty dollars; temporary subagency: Twenty-five dollars;

(c) Vehicle manufacturers: Five hundred dollars.

(2) The annual fee for renewal of any license issued pursuant to this chapter shall be:

(a) Vehicle dealers, principal place of business for each and every license classification: Two hundred fifty dollars;

(b) Vehicle dealer, each and every subagency: Twenty-five dollars;

(c) Vehicle manufacturers: Two hundred fifty dollars.

If any licensee fails or neglects to apply for such renewal within thirty days after the expiration of the license, or assigned renewal date under a staggered licensing system, the license shall be declared canceled by the director, in which case the licensee will be required to apply for an original license and pay the fee required for the original license.

(3) The fee for the transfer to another location of any license classification issued pursuant to this chapter shall be twenty-five dollars.

(4) The fee for vehicle dealer license plates and manufacturer license plates shall be the amount required by law for vehicle license plates exclusive of excise tax, except those specified in RCW 82.44.030, and gross weight and tonnage fees.

(5) All fees collected under this chapter shall be deposited in the state treasury and credited to the motor vehicle fund.

(6) The fees prescribed in this section are in addition to any excise taxes imposed by chapter 82.44 RCW. [1990 c 250 § 65; 1986 c 241 § 10; 1986 c 241 § 9; 1979 ex.s. c 251 § 1; 1973 1st ex.s. c 132 § 7; 1967 ex.s. c 74 § 13.]

Severability—1990 c 250: See note following RCW 46.16.301.

Effective dates—1986 c 241: "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, except section 9 of this act shall take effect July 1, 1986, and section 10 of this act shall take effect July 1, 1987." [1986 c 241 § 28.]

46.70.083 Expiration of license—Application for renewal—Certification of established place of business.

The license of a vehicle dealer or a vehicle manufacturer expires on the date that is twelve consecutive months from the date of issuance. The license may be renewed by filing with the department prior to the expiration of the license, a renewal application containing such information as the department may require to indicate the number of vehicle sales transacted during the past year, and any material change in the information contained in the original application. Failure by the dealer to comply is grounds for denial of the renewal application or dealer license plate renewal.

The dealer's established place of business shall be certified by a representative of the department at least once every thirty-two months, or more frequently as determined necessary by the department. The certification will verify compliance with the requirements of this chapter for an established place of business. Failure by the dealer to comply at any time is grounds for license

suspension or revocation, denial of the renewal application, or monetary assessment. [1991 c 140 § 2; 1990 c 250 § 66; 1986 c 241 § 12; 1985 c 109 § 1; 1973 1st ex.s. c 132 § 12; 1971 ex.s. c 74 § 6; 1967 ex.s. c 74 § 10.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.70.085 Dealers and manufacturers licenses—Staggered renewal. Notwithstanding any provision of law to the contrary, the director may extend or diminish licensing periods of dealers and manufacturers for the purpose of staggering renewal periods. The extension or diminishment shall be by rule of the department adopted in accordance with chapter 34.05 RCW. [1990 c 250 § 67; 1985 c 109 § 2.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.70.090 Dealer and manufacturer license plates—Use. (1) The department shall issue a vehicle dealer license plate which shall be attached to the rear of the vehicle only and which is capable of distinguishing the classification of the dealer, to vehicle dealers properly licensed pursuant to this chapter and shall, upon application, issue manufacturer's license plates to manufacturers properly licensed pursuant to this chapter.

(2) The department shall not issue a vehicle dealer license plate to any vehicle dealer selling fewer than five vehicles annually. After the first dealer plate is issued, the department shall limit the number of dealer plates to six percent of the vehicles sold during the preceding license period. For an original license the vehicle dealer license applicant shall estimate the first year's sales.

(3) Motor vehicle dealer license plates may be used:

(a) To demonstrate motor vehicles held for sale when operated by an individual holding a valid operator's license, if a dated demonstration permit, valid for no more than seventy-two hours, is carried in the vehicle at all times it is operated by any such individual.

(b) On motor vehicles owned, held for sale, and which are in fact available for sale by the firm when operated by an officer of the corporation, partnership, or proprietorship or by their spouses, or by a bona fide full-time employee of the firm, if a card so identifying any such individual is carried in the vehicle at all times it is operated by such individual. Any such vehicle so operated may be used to transport the dealer's own tools, parts, and equipment of a total weight not to exceed five hundred pounds.

(c) On motor vehicles being tested for repair.

(d) On motor vehicles being moved to or from a motor vehicle dealer's place of business for sale.

(e) On motor vehicles being moved to or from motor vehicle service and repair facilities before sale.

(f) On motor vehicles being moved to or from motor vehicle exhibitions within the state of Washington, if any such exhibition does not exceed a period of twenty days.

(4) Mobile home and travel trailer dealer license plates may be used:

(a) On units hauled to or from the place of business of the manufacturer and the place of business of the dealer or to and from places of business of the dealer.

(b) On mobile homes hauled to a customer's location for set-up after sale.

(c) On travel trailers held for sale to demonstrate the towing capability of the vehicle if a dated demonstration permit, valid for not more than seventy-two hours, is carried with the vehicle at all times.

(d) On mobile homes being hauled from a customer's location if the requirements of RCW 46.44.170 and 46.44.175 are met.

(e) On any motor vehicle owned by the dealer which is used only to move vehicles legally bearing mobile home and travel trailer dealer license plates of the dealer so owning any such motor vehicle.

(f) On vehicles being moved to or from vehicle exhibitions within the state of Washington, if any such exhibition does not exceed a period of twenty days.

(5) Miscellaneous vehicle dealer license plates may be used:

(a) To demonstrate any miscellaneous vehicle: **PROVIDED, That:**

(i) No such vehicle may be demonstrated on a public highway unless the customer has an appropriate endorsement on his driver's license, if such endorsement is required to operate such vehicle; and

(ii) A dated demonstration permit, valid for no more than seventy-two hours, is carried with the vehicle at all times it is operated by any such individual.

(b) On vehicles owned, held for sale, and which are in fact available for sale, by the firm when operated by an officer of the corporation, partnership, or proprietorship or by a bona fide full-time employee of the firm, if a card so identifying such individual is carried in the vehicle at all times it is operated by him.

(c) On vehicles being tested for repair.

(d) On vehicles being transported to or from the place of business of the manufacturer and the place of business of the dealer or to and from places of business of the dealer.

(e) On vehicles on which any other item sold or to be sold by the dealer is transported from the place of business of the manufacturer to the place of business of the dealer or to and from places of business of the dealer if such vehicle and such item are purchased or sold as one package.

(6) Manufacturers properly licensed pursuant to this chapter may apply for and obtain manufacturer license plates and may be used:

(a) On vehicles being moved to or from the place of business of a manufacturer to a vehicle dealer within this state who is properly licensed pursuant to this chapter.

(b) To test vehicles for repair.

(7) Vehicle dealer license plates and manufacturer license plates shall not be used for any purpose other than set forth in this section and specifically shall not be:

(a) Used on any vehicle not within the class for which the vehicle dealer or manufacturer license plates are issued unless specifically provided for in this section.

(b) Loaned to any person for any reason not specifically provided for in this section.

(c) Used on any vehicles for the transportation of any person, produce, freight, or commodities unless specifically provided for in this section, except there shall be permitted the use of such vehicle dealer license plates on a vehicle transporting commodities in the course of a demonstration over a period not to exceed seventy-two consecutive hours from the commencement of such demonstration, if a representative of the dealer is present and accompanies such vehicle during the course of the demonstration.

(d) Used on any vehicle sold to a resident of another state to transport such vehicle to that other state in lieu of a trip permit or in lieu of vehicle license plates obtained from that other state.

(e) Used on any new vehicle unless the vehicle dealer has provided the department a current service agreement with the manufacturer or distributor of that vehicle as provided in RCW 46.70.041(1)(k).

(8) In addition to or in lieu of any sanction imposed by the director pursuant to RCW 46.70.101 for unauthorized use of vehicle dealer license plates or manufacturer license plates, the director may order that any or all vehicle dealer license plates or manufacturer license plates issued pursuant to this chapter be confiscated for such period as he deems appropriate. [1991 c 140 § 1; 1983 c 3 § 123; 1981 c 152 § 4; 1973 1st ex.s. c 132 § 13; 1971 ex.s. c 74 § 7; 1969 ex.s. c 63 § 3; 1961 c 12 § 46.70.090. Prior: 1955 c 283 § 1; 1951 c 150 § 10.]

46.70.101 Denial, suspension, or revocation of licenses—Grounds. The director may by order deny, suspend, or revoke the license of any vehicle dealer or vehicle manufacturer or, in lieu thereof or in addition thereto, may by order assess monetary penalties of a civil nature not to exceed one thousand dollars per violation, if the director finds that the order is in the public interest and that the applicant or licensee:

(1) In the case of a vehicle dealer:

(a) The applicant or licensee, or any partner, officer, director, owner of ten percent or more of the assets of the firm, or managing employee:

(i) Was the holder of a license issued pursuant to this chapter, which was revoked for cause and never reissued by the department, or which license was suspended for cause and the terms of the suspension have not been fulfilled or which license was assessed a civil penalty and the assessed amount has not been paid;

(ii) Has been adjudged guilty of a crime which directly relates to the business of a vehicle dealer and the time elapsed since the adjudication is less than ten years, or suffering any judgment within the preceding five years in any civil action involving fraud, misrepresentation, or conversion. For the purposes of this section, adjudged guilty shall mean in addition to a final conviction in either a state or municipal court, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt regardless of whether the sentence is deferred or the penalty is suspended;

(iii) Has knowingly or with reason to know made a false statement of a material fact in his application for license or any data attached thereto, or in any matter under investigation by the department;

(iv) Has knowingly, or with reason to know, provided the department with false information relating to the number of vehicle sales transacted during the past one year in order to obtain a vehicle dealer license plate;

(v) Does not have an established place of business as required in this chapter;

(vi) Refuses to allow representatives or agents of the department to inspect during normal business hours all books, records, and files maintained within this state;

(vii) Sells, exchanges, offers, brokers, auctions, solicits, or advertises a new or current model vehicle to which a factory new vehicle warranty attaches and fails to have a valid, written service agreement as required by this chapter, or having such agreement refuses to honor the terms of such agreement within a reasonable time or repudiates the same;

(viii) Is insolvent, either in the sense that their liabilities exceed their assets, or in the sense that they cannot meet their obligations as they mature;

(ix) Fails to pay any civil monetary penalty assessed by the director pursuant to this section within ten days after such assessment becomes final;

(x) Fails to notify the department of bankruptcy proceedings in the manner required by RCW 46.70.183;

(xi) Knowingly, or with reason to know, allows a salesperson employed by the dealer, or acting as their agent, to commit any of the prohibited practices set forth in subsection (1)(a) of this section and RCW 46.70.180.

(b) The applicant or licensee, or any partner, officer, director, owner of ten percent of the assets of the firm, or any employee or agent:

(i) Has failed to comply with the applicable provisions of chapter 46.12 or 46.16 RCW or this chapter or any rules and regulations adopted thereunder;

(ii) Has defrauded or attempted to defraud the state, or a political subdivision thereof of any taxes or fees in connection with the sale or transfer of a vehicle;

(iii) Has forged the signature of the registered or legal owner on a certificate of title;

(iv) Has purchased, sold, disposed of, or has in his or her possession any vehicle which he or she knows or has reason to know has been stolen or appropriated without the consent of the owner;

(v) Has willfully failed to deliver to a purchaser a certificate of ownership to a vehicle which he has sold;

(vi) Has committed any act in violation of RCW 46.70.090 relating to vehicle dealer license plates or manufacturer license plates;

(vii) Has committed any act in violation of RCW 46.70.180 relating to unlawful acts and practices;

(viii) Has engaged in practices inimical to the health or safety of the citizens of the state of Washington including but not limited to failure to comply with standards set by the state of Washington or the federal government pertaining to the construction or safety of vehicles;

(ix) Has aided or assisted an unlicensed dealer or salesperson in unlawful activity through active or passive participation in sales, allowing use of facilities, dealer license number, or by any other means;

(x) Converts or appropriates, whether temporarily or permanently, property or funds belonging to a customer, dealer, or manufacturer, without the consent of the owner of the property or funds; or

(xi) Has sold any vehicle with knowledge that it has "REBUILT" on the title or has been declared totaled out by an insurance carrier and then rebuilt without clearly disclosing that fact in writing.

(c) The licensee or any partner, officer, director, or owner of ten percent or more of the assets of the firm holds or has held any such position in any other vehicle dealership licensed pursuant to this chapter which is subject to final proceedings under this section.

(2) In the case of a manufacturer, or any partner, officer, director, or majority shareholder:

(a) Was or is the holder of a license issued pursuant to this chapter which was revoked for cause and never reissued by the department, or which license was suspended for cause and the terms of the suspension have not been fulfilled, or which license was assessed a civil penalty and the assessed amount has not been paid;

(b) Has knowingly or with reason to know, made a false statement of a material fact in his application for license, or any data attached thereto, or in any matter under investigation by the department;

(c) Has failed to comply with the applicable provisions of chapter 46.12 or 46.16 RCW or this chapter or any rules and regulations adopted thereunder;

(d) Has defrauded or attempted to defraud the state or a political subdivision thereof, of any taxes or fees in connection with the sale or transfer of a vehicle;

(e) Has purchased, sold, disposed of, or has in his possession, any vehicle which he knows or has reason to know has been stolen or appropriated without the consent of the owner;

(f) Has committed any act in violation of RCW 46.70.090 relating to vehicle dealer license plates and manufacturer license plates;

(g) Has committed any act in violation of RCW 46.70.180 relating to unlawful acts and practices;

(h) Sells or distributes in this state or transfers into this state for resale, any new or unused vehicle to which a warranty attaches or has attached and refuses to honor the terms of such warranty within a reasonable time or repudiates the same;

(i) Fails to maintain one or more resident employees or agents to provide service or repairs to vehicles located within the state of Washington only under the terms of any warranty attached to new or unused vehicles manufactured and which are or have been sold or distributed in this state or transferred into this state for resale unless such manufacturer requires warranty service to be performed by all of its dealers pursuant to a current service agreement on file with the department;

(j) Fails to reimburse within a reasonable time any vehicle dealer within the state of Washington who in good faith incurs reasonable obligations in giving effect

to warranties that attach or have attached to any new or unused vehicle sold or distributed in this state or transferred into this state for resale by any such manufacturer;

(k) Engaged in practices inimical to the health and safety of the citizens of the state of Washington including but not limited to failure to comply with standards set by the state of Washington or the federal government pertaining to the construction and safety of vehicles;

(l) Is insolvent either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature;

(m) Fails to notify the department of bankruptcy proceedings in the manner required by RCW 46.70.183. [1991 c 140 § 3; 1989 c 337 § 16; 1986 c 241 § 13; 1981 c 152 § 5; 1977 ex.s. c 125 § 3; 1973 1st ex.s. c 132 § 14; 1969 ex.s. c 63 § 4; 1967 ex.s. c 74 § 11.]

46.70.120 Record of transactions. A dealer shall complete and maintain for a period of at least five years a record of the purchase and sale of all vehicles purchased or sold by him. The records shall consist of:

(1) The license and title numbers of the state in which the last license was issued;

(2) A description of the vehicle;

(3) The name and address of person from whom purchased;

(4) The name of legal owner, if any;

(5) The name and address of purchaser;

(6) If purchased from a dealer, the name, business address, dealer license number, and resale tax number of the dealer;

(7) The price paid for the vehicle and the method of payment;

(8) The vehicle odometer disclosure statement given by the seller to the dealer, and the vehicle odometer disclosure statement given by the dealer to the purchaser;

(9) The written agreement to allow a dealer to sell between the dealer and the consignor, or the listing dealer and the seller;

(10) Trust account records of receipts, deposits, and withdrawals;

(11) All sale documents, which shall show the full name of dealer employees involved in the sale;

(12) Any additional information the department may require.

Such record shall be maintained separate and apart from all other business records of the dealer and shall at all times be available for inspection by the director or his duly authorized agent. [1990 c 238 § 7; 1986 c 241 § 16; 1973 1st ex.s. c 132 § 15; 1961 c 12 § 46.70.120. Prior: 1951 c 150 § 15.]

Effective date, implementation—1990 c 238: See note following RCW 46.12.030.

Odometer disclosure statement: RCW 46.12.124.

46.70.180 Unlawful acts and practices. Each of the following acts or practices is unlawful:

(1) To cause or permit to be advertised, printed, displayed, published, distributed, broadcasted, televised, or disseminated in any manner whatsoever, any statement

or representation with regard to the sale or financing of a vehicle which is false, deceptive, or misleading, including but not limited to the following:

(a) That no down payment is required in connection with the sale of a vehicle when a down payment is in fact required, or that a vehicle may be purchased for a smaller down payment than is actually required;

(b) That a certain percentage of the sale price of a vehicle may be financed when such financing is not offered in a single document evidencing the entire security transaction;

(c) That a certain percentage is the amount of the service charge to be charged for financing, without stating whether this percentage charge is a monthly amount or an amount to be charged per year;

(d) That a new vehicle will be sold for a certain amount above or below cost without computing cost as the exact amount of the factory invoice on the specific vehicle to be sold;

(e) That a vehicle will be sold upon a monthly payment of a certain amount, without including in the statement the number of payments of that same amount which are required to liquidate the unpaid purchase price.

(2) To incorporate within the terms of any purchase and sale agreement any statement or representation with regard to the sale or financing of a vehicle which is false, deceptive, or misleading, including but not limited to terms that include as an added cost to the selling price of a vehicle an amount for licensing or transfer of title of that vehicle which is not actually due to the state, unless such amount has in fact been paid by the dealer prior to such sale.

(3) To set up, promote, or aid in the promotion of a plan by which vehicles are to be sold to a person for a consideration and upon further consideration that the purchaser agrees to secure one or more persons to participate in the plan by respectively making a similar purchase and in turn agreeing to secure one or more persons likewise to join in said plan, each purchaser being given the right to secure money, credits, goods, or something of value, depending upon the number of persons joining the plan.

(4) To commit, allow, or ratify any act of "bushing" which is defined as follows: Taking from a prospective buyer of a vehicle a written order or offer to purchase, or a contract document signed by the buyer, which:

(a) Is subject to the dealer's, or his authorized representative's future acceptance, and the dealer fails or refuses within forty-eight hours, exclusive of Saturday, Sunday, or legal holiday, and prior to any further negotiations with said buyer, to deliver to the buyer either the dealer's signed acceptance or all copies of the order, offer, or contract document together with any initial payment or security made or given by the buyer, including but not limited to money, check, promissory note, vehicle keys, a trade-in, or certificate of title to a trade-in; or

(b) Permits the dealer to renegotiate a dollar amount specified as trade-in allowance on a vehicle delivered or to be delivered by the buyer as part of the purchase

price, for any reason except substantial physical damage or latent mechanical defect occurring before the dealer took possession of the vehicle and which could not have been reasonably discoverable at the time of the taking of the order, offer, or contract; or

(c) Fails to comply with the obligation of any written warranty or guarantee given by the dealer requiring the furnishing of services or repairs within a reasonable time.

(5) To commit any offense relating to odometers, as such offenses are defined in RCW 46.37.540, 46.37.550, 46.37.560, and 46.37.570. A violation of this subsection is a class C felony punishable under chapter 9A.20 RCW.

(6) For any vehicle dealer or vehicle salesman to refuse to furnish, upon request of a prospective purchaser, the name and address of the previous registered owner of any used vehicle offered for sale.

(7) To commit any other offense under RCW 46.37.423, 46.37.424, or 46.37.425.

(8) To commit any offense relating to a dealer's temporary license permit, including but not limited to failure to properly complete each such permit, or the issuance of more than one such permit on any one vehicle.

(9) For a dealer, salesman, or mobile home manufacturer, having taken an instrument or cash "on deposit" from a purchaser prior to the delivery of the bargained-for vehicle, to commingle said "on deposit" funds with assets of the dealer, salesman, or mobile home manufacturer instead of holding said "on deposit" funds as trustee in a separate trust account until the purchaser has taken delivery of the bargained-for vehicle. Failure, immediately upon receipt, to endorse "on deposit" instruments to such a trust account, or to set aside "on deposit" cash for deposit in such trust account, and failure to deposit such instruments or cash in such trust account by the close of banking hours on the day following receipt thereof, shall be evidence of intent to commit this unlawful practice: PROVIDED, HOWEVER, That a motor vehicle dealer may keep a separate trust account which equals his customary total customer deposits for vehicles for future delivery.

(10) For a dealer or manufacturer to fail to comply with the obligations of any written warranty or guarantee given by the dealer or manufacturer requiring the furnishing of goods and services or repairs within a reasonable period of time, or to fail to furnish to a purchaser, all parts which attach to the manufactured unit including but not limited to the undercarriage, and all items specified in the terms of a sales agreement signed by the seller and buyer.

(11) Being a manufacturer, other than a motorcycle manufacturer governed by chapter 46.94 RCW, to:

(a) Coerce or attempt to coerce any vehicle dealer to order or accept delivery of any vehicle or vehicles, parts or accessories, or any other commodities which have not been voluntarily ordered by the vehicle dealer: PROVIDED, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute coercion;

(b) Cancel or fail to renew the franchise or selling agreement of any vehicle dealer doing business in this state without fairly compensating the dealer at a fair going business value for his capital investment which shall include but not be limited to tools, equipment, and parts inventory possessed by the dealer on the day he is notified of such cancellation or termination and which are still within the dealer's possession on the day the cancellation or termination is effective, if: (i) The capital investment has been entered into with reasonable and prudent business judgment for the purpose of fulfilling the franchise; and (ii) said cancellation or nonrenewal was not done in good faith. Good faith is defined as the duty of each party to any franchise to act in a fair and equitable manner towards each other, so as to guarantee one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: PROVIDED, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute a lack of good faith.

(c) Encourage, aid, abet, or teach a vehicle dealer to sell vehicles through any false, deceptive, or misleading sales or financing practices including but not limited to those practices declared unlawful in this section;

(d) Coerce or attempt to coerce a vehicle dealer to engage in any practice forbidden in this section by either threats of actual cancellation or failure to renew the dealer's franchise agreement;

(e) Refuse to deliver any vehicle publicly advertised for immediate delivery to any duly licensed vehicle dealer having a franchise or contractual agreement for the retail sale of new and unused vehicles sold or distributed by such manufacturer within sixty days after such dealer's order has been received in writing unless caused by inability to deliver because of shortage or curtailment of material, labor, transportation, or utility services, or by any labor or production difficulty, or by any cause beyond the reasonable control of the manufacturer;

(f) To provide under the terms of any warranty that a purchaser of any new or unused vehicle that has been sold, distributed for sale, or transferred into this state for resale by the vehicle manufacturer may only make any warranty claim on any item included as an integral part of the vehicle against the manufacturer of that item.

Nothing in this section may be construed to impair the obligations of a contract or to prevent a manufacturer, distributor, representative, or any other person, whether or not licensed under this chapter, from requiring performance of a written contract entered into with any licensee hereunder, nor does the requirement of such performance constitute a violation of any of the provisions of this section if any such contract or the terms thereof requiring performance, have been freely entered into and executed between the contracting parties. This paragraph and subsection (11)(b) of this section do not apply to new motor vehicle manufacturers governed by chapter 46.96 RCW.

(12) Unlawful transfer of an ownership interest in a motor vehicle as defined in RCW 19.116.050. [1990 c 44 § 14; 1989 c 415 § 20; 1986 c 241 § 18; 1985 c 472 §

13; 1981 c 152 § 6; 1977 ex.s. c 125 § 4; 1973 1st ex.s. c 132 § 18; 1969 c 112 § 1; 1967 ex.s. c 74 § 16.]

Severability—1990 c 44: See RCW 19.116.900.

Severability—1989 c 415: See RCW 46.96.900.

Severability—1985 c 472: See RCW 46.94.900.

Odometers—*Disconnecting, resetting, turning back, replacing without notifying purchaser: RCW 46.37.540 through 46.37.570.*

Chapter 46.72

TRANSPORTATION OF PASSENGERS IN FOR HIRE VEHICLES

Sections

46.72.010 Definitions.

46.72.010 Definitions. When used in this chapter:

(1) The term "for hire vehicle" includes all vehicles used for the transportation of passengers for compensation, except auto stages, school buses operating exclusively under a contract to a school district, ride-sharing vehicles, and limousine charter party carriers licensed under chapter 81.90 RCW whose sole use as a for hire vehicle is that of a limousine charter party carrier;

(2) The term "for hire operator" means and includes any person, concern, or entity engaged in the transportation of passengers for compensation in for hire vehicles. [1991 c 99 § 1; 1979 c 111 § 14; 1961 c 12 § 46.72.010. Prior: 1947 c 253 § 1; Rem. Supp. 1947 § 6386-1. Formerly RCW 81.72.010.]

Severability—1979 c 111: See note following RCW 46.74.010.

Chapter 46.76

MOTOR VEHICLE TRANSPORTERS

Sections

46.76.040 License and plate fees.

46.76.040 License and plate fees. The fee for an original transporter's license is twenty-five dollars. Transporter license number plates bearing an appropriate symbol and serial number shall be attached to all vehicles being delivered in the conduct of the business licensed under this chapter. The plates may be obtained for a fee of two dollars for each set. [1990 c 250 § 68; 1961 c 12 § 46.76.040. Prior: 1957 c 107 § 2; 1947 c 97 § 4; Rem. Supp. 1947 § 6382-78.]

Severability—1990 c 250: See note following RCW 46.16.301.

Chapter 46.79

HULK HAULERS AND SCRAP PROCESSORS

(Formerly: Hulk haulers' or scrap processors' licenses)

Sections

46.79.010 Definitions.

46.79.020 Transporting junk vehicles to scrap processor, authorized, procedure—Removal of parts, restrictions.

46.79.070 Acts for which license may be denied, suspended, revoked or monetary penalties assessed.

46.79.010 Definitions. The definitions set forth in this section apply throughout this chapter unless the context indicates otherwise.

(1) "Junk vehicle" means a motor vehicle certified under RCW 46.55.230 as meeting all the following requirements:

- (a) Is three years old or older;
- (b) Is extensively damaged, such damage including but not limited to any of the following: A broken window or windshield or missing wheels, tires, motor, or transmission;
- (c) Is apparently inoperable;
- (d) Is without a valid, current registration plate;
- (e) Has a fair market value equal only to the value of the scrap in it.

(2) "Scrap processor" means a licensed establishment that maintains a hydraulic baler and shears, or a shredder for recycling salvage.

(3) "Demolish" means to destroy completely by use of a hydraulic baler and shears, or a shredder.

(4) "Hulk hauler" means any person who deals in vehicles for the sole purpose of transporting and/or selling them to a licensed motor vehicle wrecker or scrap processor in substantially the same form in which they are obtained. A hulk hauler may not sell second-hand motor vehicle parts to anyone other than a licensed vehicle wrecker or scrap processor, except for those parts specifically enumerated in RCW 46.79.020(2), as now or hereafter amended, which may be sold to a licensed motor vehicle wrecker or disposed of at a public facility for waste disposal.

(5) "Director" means the director of licensing.

(6) "Major component parts" include engines and short blocks, frames, transmissions or transfer cases, cabs, doors, front or rear differentials, front or rear clips, quarter panels or fenders, bumpers, truck beds or boxes, seats, and hoods. [1990 c 250 § 69; 1983 c 142 § 2; 1979 c 158 § 190; 1971 ex.s. c 110 § 1.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.79.020 Transporting junk vehicles to scrap processor, authorized, procedure—Removal of parts, restrictions. Any hulk hauler or scrap processor licensed under the provisions of this chapter may:

(1) Notwithstanding any other provision of law, transport any flattened or junk vehicle whether such vehicle is from in state or out of state, to a scrap processor upon obtaining the certificate of title or release of interest from the owner or an affidavit of sale from the landowner who has complied with RCW 46.55.230. The scrap processor shall forward such document(s) to the department, together with a monthly report of all vehicles acquired from other than a licensed automobile wrecker, and no further identification shall be necessary.

(2) Prepare vehicles and vehicle salvage for transportation and delivery to a scrap processor or vehicle wrecker only by removing the following vehicle parts:

- (a) Gas tanks;
- (b) Vehicle seats containing springs;
- (c) Tires;
- (d) Wheels;

- (e) Scrap batteries;
- (f) Scrap radiators.

Such parts may not be removed if they will be accepted by a scrap processor or wrecker. Such parts may be removed only at a properly zoned location, and all preparation activity, vehicles, and vehicle parts shall be obscured from public view. Storage is limited to two vehicles or the parts thereof which are authorized by this subsection, and any such storage may take place only at a properly zoned location. Any vehicle parts removed under the authority of this subsection shall be lawfully disposed of at or through a public facility or service for waste disposal or by sale to a licensed motor vehicle wrecker. [1990 c 250 § 70; 1987 c 62 § 1; 1983 c 142 § 3; 1979 c 158 § 191; 1971 ex.s. c 110 § 2.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.79.070 Acts for which license may be denied, suspended, revoked or monetary penalties assessed. The director may by order pursuant to the provisions of chapter 34.05 RCW, deny, suspend, or revoke the license of any hulk hauler or scrap processor or, in lieu thereof or in addition thereto, may by order assess monetary penalties of a civil nature not to exceed five hundred dollars per violation, whenever the director finds that the applicant or licensee:

(1) Removed a vehicle or vehicle major component part from property without obtaining both the written permission of the property owner and documentation approved by the department for acquiring vehicles, junk vehicles, or major component parts thereof;

(2) Acquired, disposed of, or possessed a vehicle or major component part thereof when he or she knew that such vehicle or part had been stolen or appropriated without the consent of the owner;

(3) Sold, bought, received, concealed, had in his or her possession, or disposed of a vehicle or major component part thereof having a missing, defaced, altered, or covered manufacturer's identification number, unless approved by a law enforcement officer;

(4) Committed forgery or made any material misrepresentation on any document relating to the acquisition, disposition, registration, titling, or licensing of a vehicle pursuant to Title 46 RCW;

(5) Committed any dishonest act or omission which has caused loss or serious inconvenience as a result of the acquisition or disposition of a vehicle or any major component part thereof;

(6) Failed to comply with any of the provisions of this chapter or other applicable law relating to registration and certificates of title of vehicles and any other document releasing any interest in a vehicle;

(7) Been authorized to remove a particular vehicle or vehicles and failed to take all remnants and debris from those vehicles from that area unless requested not to do so by the person authorizing the removal;

(8) Removed parts from a vehicle at other than an approved location or removed or sold parts or vehicles beyond the scope authorized by this chapter or any rule adopted hereunder;

(9) Been adjudged guilty of a crime which directly relates to the business of a hulk hauler or scrap processor and the time elapsed since the adjudication is less than five years. For the purposes of this section adjudged guilty means, in addition to a final conviction in either a federal, state, or municipal court, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt regardless of whether the imposition of sentence is deferred or the penalty is suspended; or

(10) Been the holder of a license issued pursuant to this chapter which was revoked for cause and never reissued by the department, or which license was suspended for cause and the terms of the suspension have not been fulfilled, or which license was assessed a civil penalty and the assessed amount has not been paid. [1990 c 250 § 71; 1983 c 142 § 5; 1971 ex.s. c 110 § 7.]

Severability—1990 c 250: See note following RCW 46.16.301.

Chapter 46.80

MOTOR VEHICLE WRECKERS

Sections

46.80.030 Application for license—Contents.

46.80.030 Application for license—Contents. Application for a motor vehicle wrecker's license or renewal of a vehicle wrecker's license shall be made on a form for this purpose, furnished by the department of licensing, and shall be signed by the motor vehicle wrecker or his authorized agent and shall include the following information:

(1) Name and address of the person, firm, partnership, association or corporation under which name the business is to be conducted;

(2) Names and residence address of all persons having an interest in the business or, if the owner is a corporation, the names and addresses of the officers thereof;

(3) Certificate of approval of the chief of police of any city or town having a population of over five thousand persons and in all other instances a member of the Washington state patrol certifying that:

(a) The applicant has an established place of business at the address shown on the application, and;

(b) In the case of a renewal of a vehicle wrecker's license, the applicant is in compliance with this chapter and the provisions of Title 46 RCW, relating to registration and certificates of title: PROVIDED, That the above certifications in any instance can be made by an authorized representative of the department of licensing;

(4) Any other information that the department may require. [1990 c 250 § 72; 1979 c 158 § 193; 1977 ex.s. c 253 § 4; 1971 ex.s. c 7 § 2; 1967 ex.s. c 13 § 1; 1967 c 32 § 95; 1961 c 12 § 46.80.030. Prior: 1947 c 262 § 3; Rem. Supp. 1947 § 8326-42.]

Severability—1990 c 250: See note following RCW 46.16.301.

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

Chapter 46.82

DRIVER TRAINING SCHOOLS

Sections

46.82.410 Disposition of moneys collected.
46.82.420 Basic minimum required curriculum—Compilation by advisory committee—Revocation of license for failure to teach, show cause hearing upon.

46.82.410 Disposition of moneys collected. All moneys collected from driver training school licenses and instructor licenses shall be deposited in the highway safety fund. [1990 c 250 § 73; 1979 ex.s. c 51 § 14.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.82.420 Basic minimum required curriculum—Compilation by advisory committee—Revocation of license for failure to teach, show cause hearing upon. The advisory committee shall compile and furnish to each qualifying applicant for an instructor's license or a driver training school license a basic minimum required curriculum. The basic minimum required curriculum shall also include information on the effects of alcohol and drug use on motor vehicle operators, including information on drug and alcohol related traffic injury and mortality rates in the state of Washington, and current penalties for driving under the influence of drugs or alcohol. Should the director be presented with acceptable proof that any licensed instructor or driver training school is not showing proper diligence in teaching such basic minimum curriculum as required, the instructor or school shall be required to appear before the advisory committee and show cause why the license of the instructor or school should not be revoked for such negligence. If the committee does not accept such reasons as may be offered, the director may revoke the license of the instructor or school, or both. [1991 c 217 § 3; 1979 ex.s. c 51 § 15.]

Chapter 46.87

PROPORTIONAL REGISTRATION

(Formerly: International Registration Plan)

Sections

46.87.020 Definitions.
46.87.022 Rental trailers, converter gears.
46.87.025 Vehicles titled in owner's name.
46.87.070 Registration of trailers, semitrailers, pole trailers.
46.87.120 Mileage data for applications—Nonmotor vehicles.
46.87.140 Application—Filing, contents—Fees and taxes—Assessments, due date.
46.87.270 Gross weight on vehicle.
46.87.335 Mitigation of assessments.

46.87.020 Definitions. Terms used in this chapter have the meaning given to them in the International Registration Plan (IRP), the Uniform Vehicle Registration, Proration, and Reciprocity Agreement (Western Compact), chapter 46.04 RCW, or as otherwise defined in this section. Definitions given to terms by the IRP and the Western Compact, as applicable, shall prevail unless given a different meaning in this chapter or in rules adopted under authority of this chapter.

(1) "Apportionable vehicle" has the meaning given by the IRP, except that it does not include vehicles with a declared gross weight of twelve thousand pounds or less. Apportionable vehicles include trucks, tractors, truck tractors, road tractors, and buses, each as separate and licensable vehicles. For IRP jurisdictions that require the registration of nonmotor vehicles, this term may include trailers, semitrailers, and pole trailers as applicable, each as separate and licensable vehicles.

(2) "Cab card" is a certificate of registration issued for a vehicle by the registering jurisdiction under the Western Compact. Under the IRP, it is a certificate of registration issued by the base jurisdiction for a vehicle upon which is disclosed the jurisdictions and registered gross weights in such jurisdictions for which the vehicle is registered.

(3) "Commercial vehicle" is a term used by the Western Compact and means any vehicle, except recreational vehicles, vehicles displaying restricted plates, and government owned or leased vehicles, that is operated and registered in more than one jurisdiction and is used or maintained for the transportation of persons for hire, compensation, or profit, or is designed, used, or maintained primarily for the transportation of property and:

(a) Is a motor vehicle having a declared gross weight in excess of twenty-six thousand pounds; or

(b) Is a motor vehicle having three or more axles with a declared gross weight in excess of twelve thousand pounds; or

(c) Is a motor vehicle, trailer, pole trailer, or semitrailer used in combination when the gross weight or declared gross weight of the combination exceeds twenty-six thousand pounds combined gross weight. The non-motor vehicles mentioned are only applicable to those jurisdictions requiring the registration of such vehicles.

Although a two-axle motor vehicle, trailer, pole trailer, semitrailer, or any combination of such vehicles with an actual or declared gross weight or declared combined gross weight exceeding twelve thousand pounds but not more than twenty-six thousand is not considered to be a commercial vehicle, at the option of the owner, such vehicles may be considered as "commercial vehicles" for the purpose of proportional registration. The nonmotor vehicles mentioned are only applicable to those jurisdictions requiring the registration of such vehicles.

Commercial vehicles include trucks, tractors, truck tractors, road tractors, and buses. Trailers, pole trailers, and semitrailers, will also be considered as commercial vehicles for those jurisdictions who require registration of such vehicles.

(4) "Credentials" means cab cards, apportioned plates (for Washington-based fleets), and validation tabs issued for proportionally registered vehicles.

(5) "Declared combined gross weight" means the total unladen weight of any combination of vehicles plus the weight of the maximum load to be carried on the combination of vehicles as set by the registrant in the application pursuant to chapter 46.44 RCW and for which registration fees have been or are to be paid.

(6) "Declared gross weight" means the total unladen weight of any vehicle plus the weight of the maximum load to be carried on the vehicle as set by the registrant in the application pursuant to chapter 46.44 RCW and for which registration fees have been or are to be paid. In the case of a bus, auto stage, or a passenger-carrying for hire vehicle with a seating capacity of more than six, the declared gross weight shall be determined by multiplying the average load factor of one hundred and fifty pounds by the number of seats in the vehicle, including the driver's seat, and add this amount to the unladen weight of the vehicle. If the resultant gross weight is not listed in RCW 46.16.070, it will be increased to the next higher gross weight so listed pursuant to chapter 46.44 RCW.

(7) "Department" means the department of licensing.

(8) "Fleet" means one or more commercial vehicles in the Western Compact and one or more apportionable vehicles in the IRP.

(9) "In-jurisdiction miles" means the total miles accumulated in a jurisdiction during the preceding year by vehicles of the fleet while they were a part of the fleet.

(10) "IRP" means the International Registration Plan.

(11) "Jurisdiction" means and includes a state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign county [country], and a state or province of a foreign country.

(12) "Owner" means a person or business firm who holds the legal title to a vehicle, or if a vehicle is the subject of an agreement for its conditional sale with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or if a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or if a mortgagor of a vehicle is entitled to possession, then the owner is deemed to be the person or business firm in whom is vested right of possession or control.

(13) "Preceding year" means the period of twelve consecutive months immediately prior to July 1st of the year immediately preceding the commencement of the registration or license year for which proportional registration is sought.

(14) "Properly registered," as applied to the place of registration under the provisions of the Western Compact, means:

(a) In the case of a commercial vehicle, the jurisdiction in which it is registered if the commercial enterprise in which the vehicle is used has a place of business therein, and, if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled in or from that place of business, and the vehicle has been assigned to that place of business; or

(b) In the case of a commercial vehicle, the jurisdiction where, because of an agreement or arrangement between two or more jurisdictions, or pursuant to a declaration, the vehicle has been registered as required by that jurisdiction.

In case of doubt or dispute as to the proper place of registration of a commercial vehicle, the department shall make the final determination, but in making such determination, may confer with departments of the other jurisdictions affected.

(15) "Prorate percentage" is the factor that is applied to the total proratable fees and taxes to determine the apportionable or prorate fees required for registration in a particular jurisdiction. It is determined by dividing the in-jurisdiction miles for a particular jurisdiction by the total miles. This term is synonymous with the term "mileage percentage."

(16) "Registrant" means a person, business firm, or corporation in whose name or names a vehicle or fleet of vehicles is registered.

(17) "Registration year" means the twelve-month period during which the registration plates issued by the base jurisdiction are valid according to the laws of the base jurisdiction. The "registration year" for Washington is the period from January 1st through December 31st of each calendar year.

(18) "Total miles" means the total number of miles accumulated in all jurisdictions during the preceding year by all vehicles of the fleet while they were a part of the fleet. Mileage accumulated by vehicles of the fleet that did not engage in interstate operations is not included in the fleet miles.

(19) "Western Compact" means the Uniform Vehicle Registration, Proration, and Reciprocity Agreement. [1991 c 163 § 4; 1990 c 42 § 111; 1987 c 244 § 16; 1985 c 380 § 2.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.022 Rental trailers, converter gears. Owners of rental trailers and semitrailers over six thousand pounds gross vehicle weight, and converter gears used solely in pool fleets shall fully register a portion of the pool fleet in this state. To determine the percentage of total fleet vehicles that must be registered in this state, divide the gross revenue received in the preceding year for the use of the rental vehicles arising from rental transactions occurring in this state by the total revenue received in the preceding year for the use of the rental vehicles arising from rental transactions in all jurisdictions in which the vehicles are operated. Apply the resulting percentage to the total number of vehicles that shall be registered in this state. Vehicles registered in this state shall be representative of the vehicles in the fleet according to age, size, and value. [1990 c 250 § 74.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.87.025 Vehicles titled in owner's name. All vehicles being added to an existing Washington-based fleet or those vehicles that make up a new Washington-based fleet shall be titled in the name of the owner at time of registration, or evidence of filing application for title for

such vehicles in the name of the owner shall accompany the application for proportional registration. [1990 c 250 § 75; 1987 c 244 § 17.]

Severability—1990 c 250: See note following RCW 46.16.301.

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.070 Registration of trailers, semitrailers, pole trailers. (1) Washington-based trailers, semitrailers, or pole trailers shall be licensed in this state under the provisions of chapter 46.16 RCW except as herein provided. If these vehicles are being operated in jurisdictions that require the registration of such vehicles, the applicable vehicles may be considered as apportionable or commercial vehicles for the purpose of registration in those jurisdictions and this state.

(2) Trailers, semitrailers, and pole trailers which are properly based in jurisdictions other than Washington, and which display currently registered license plates from such jurisdictions will be granted vehicle license reciprocity in this state without the need of further vehicle license registration. If pole trailers are not required to be licensed separately by a member jurisdiction, such vehicles may be operated in this state without displaying a current base license plate. [1991 c 339 § 9; 1991 c 163 § 5; 1990 c 42 § 112; 1987 c 244 § 22; 1985 c 380 § 7.]

Reviser's note: This section was amended by 1991 c 163 § 5 and by 1991 c 339 § 9, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.120 Mileage data for applications—Non-motor vehicles. (1) The initial application for proportional registration of a fleet shall state the mileage data with respect to the fleet for the preceding year in this and other jurisdictions. If no operations were conducted with the fleet during the preceding year, the application shall contain a full statement of the proposed method of operation and estimates of annual mileage in each of the jurisdictions in which operation is contemplated. The registrant shall determine the in-jurisdiction and total miles to be used in computing the fees and taxes due for the fleet. The department may evaluate and adjust the estimate in the application if it is not satisfied as to its correctness.

(2) Fleets will consist of either motor vehicles or non-motor vehicles, but not a mixture of both.

(3) In instances where the use of mileage accumulated by a nonmotor vehicle fleet is impractical, for the purpose of calculating prorate percentages, the registrant may request another method and/or unit of measure to be used in determining the prorate percentages. Upon receiving such request, the department may prescribe another method and/or unit of measure to be used in lieu of mileage that will ensure each jurisdiction that requires the registration of nonmotor vehicles its fair share of vehicle licensing fees and taxes.

(4) When operations of a Washington-based fleet is materially changed through merger, acquisition, or extended authority, the registrant shall notify the department, which shall then require the filing of an amended application setting forth the proposed operation by use of estimated mileage for all jurisdictions. The department may adjust the estimated mileage by audit or otherwise to an actual travel basis to insure proper fee payment. The actual travel basis may be used for determination of fee payments until such time as a normal mileage year is available under the new operation. Under the provisions of the Western Compact, this subsection applies to any fleet proportionally registered in Washington irrespective of the fleet's base jurisdiction. [1990 c 42 § 113; 1987 c 244 § 25.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.140 Application—Filing, contents—Fees and taxes—Assessments, due date. (1) Any owner engaged in interstate operations of one or more fleets of apportionable or commercial vehicles may, in lieu of registration of the vehicles under chapter 46.16 RCW, register and license the vehicles of each fleet under this chapter by filing a proportional registration application for each fleet with the department. The nonmotor vehicles of Washington-based fleets which are operated in IRP jurisdictions that require registration of such vehicles may be proportionally registered for operation in those jurisdictions as herein provided. The application shall contain the following information and such other information pertinent to vehicle registration as the department may require:

(a) A description and identification of each vehicle of the fleet. Motor vehicles and nonpower units shall be placed in separate fleets.

(b) If registering under the provisions of the IRP, the registrant shall also indicate member jurisdictions in which registration is desired and furnish such other information as those member jurisdictions require.

(c) An original or renewal application shall also be accompanied by a mileage schedule for each fleet.

(2) Each application shall, at the time and in the manner required by the department, be supported by payment of a fee computed as follows:

(a) Divide the in-jurisdiction miles by the total miles and carry the answer to the nearest thousandth of a percent (three places beyond the decimal, e.g. 10.543%). This factor is known as the prorate percentage.

(b) Determine the total proratable fees and taxes required for each vehicle in the fleet for which registration is requested, based on the regular annual fees and taxes or applicable fees and taxes for the unexpired portion of the registration year under the laws of each jurisdiction for which fees or taxes are to be calculated.

Washington-based nonmotor vehicles shall normally be fully licensed under the provisions of chapter 46.16 RCW. If these vehicles are being operated in jurisdictions that require the registration of such vehicles, the

applicable vehicles may be considered as apportionable vehicles for the purpose of registration in those jurisdictions and this state. The prorate percentage for which registration fees and taxes were paid to such jurisdictions may be credited toward the one hundred percent of registration fees and taxes due this state for full licensing. Applicable fees and taxes for vehicles of Washington-based fleets are those prescribed under RCW 46.16.070, 46.16.085, 82.38.075, and 82.44.020, as applicable.

(c) Multiply the total, proratable fees or taxes for each motor vehicle by the prorate percentage applicable to the desired jurisdiction and round the results to the nearest cent. Fees and taxes for nonmotor vehicles being prorated will be calculated as indicated in (b) of this subsection.

(d) Add the total fees and taxes determined in (c) of this subsection for each vehicle to the nonproratable fees required under the laws of the jurisdiction for which fees are being calculated. Nonproratable fees required for vehicles of Washington-based fleets are the administrative fee required by RCW 82.38.075, if applicable, and the vehicle transaction fee pursuant to the provisions of RCW 46.87.130.

(e) Add the total fees and taxes determined in (d) of this subsection for each vehicle listed on the application. Assuming the fees and taxes calculated were for Washington, this would be the amount due and payable for the application under the provisions of the Western Compact. Under the provisions of the IRP, the amount due and payable for the application would be the sum of the fees and taxes referred to in (d) of this subsection, calculated for each member jurisdiction in which registration of the fleet is desired.

(3) All assessments for proportional registration fees are due and payable in United States funds on the date presented or mailed to the registrant at the address listed in the proportional registration records of the department. The registrant may petition for reassessment of the fees or taxes due under this section within thirty days of the date of original service as provided for in this chapter. [1991 c 339 § 10; 1990 c 42 § 114; 1987 c 244 § 27.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.270 Gross weight on vehicle. Every Washington-based motor vehicle registered under this chapter shall have the maximum gross weight or maximum combined gross weight for which the vehicle is licensed in this state, painted or stenciled in letters or numbers of contrasting color not less than two inches in height in a conspicuous place on the right and left sides of the vehicle. It is unlawful for the owner or operator of any motor vehicle to display a maximum gross weight or maximum combined gross weight other than that shown on the current cab card of the vehicle. [1990 c 250 § 77; 1987 c 244 § 40.]

Severability—1990 c 250: See note following RCW 46.16.301.

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.335 Mitigation of assessments. Except in the case of violations of filing a false or fraudulent application, if the department deems mitigation of penalties and interest to be reasonable and in the best interests of carrying out the purpose of this chapter, it may mitigate such assessments upon whatever terms the department deems proper, giving consideration to the degree and extent of the lack of records and reporting errors. The department may ascertain the facts regarding recordkeeping and payment penalties in lieu of more elaborate proceedings under this chapter. [1991 c 339 § 5.]

Chapter 46.90

WASHINGTON MODEL TRAFFIC ORDINANCE

Sections

- 46.90.300 Certain RCW sections adopted by reference. (Effective until April 1, 1992.)
- 46.90.300 Certain RCW sections adopted by reference. (Effective April 1, 1992.)
- 46.90.406 Certain RCW sections adopted by reference.

46.90.300 Certain RCW sections adopted by reference. (Effective until April 1, 1992.) The following sections of the Revised Code of Washington as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.12.070, 46.12.080, 46.12.101, 46.12.102, 46.12.260, 46.12.300, 46.12.310, 46.12.320, 46.12.330, 46.12.340, 46.12.350, 46.12.380, 46.16.010, 46.16.011, 46.16.025, 46.16.028, 46.16.030, 46.16.088, 46.16.135, 46.16.140, 46.16.145, 46.16.170, 46.16.180, 46.16.240, 46.16.260, 46.16.290, 46.16.316, 46.16.381, 46.16.390, 46.16.500, 46.16.505, 46.16.710, 46.20.021, 46.20.022, 46.20.025, 46.20.027, 46.20.031, 46.20.041, 46.20.045, 46.20.190, 46.20.220, 46.20.308, 46.20.336, 46.20.338, 46.20.342, 46.20.343, 46.20.344, 46.20.391, 46.20.394, 46.20.410, 46.20.420, 46.20.430, 46.20.435, 46.20.440, 46.20.500, 46.20.510, 46.20.550, 46.20.750, 46.25.010, 46.25.020, 46.25.030, 46.25.040, 46.25.050, 46.25.110, 46.25.120, 46.25.170, 46.29.605, 46.30.010, 46.30.020, 46.30.030, 46.30.040, 46.32.060, 46.32.070, 46.37.010, 46.37.020, 46.37.030, 46.37.040, 46.37.050, 46.37.060, 46.37.070, 46.37.080, 46.37.090, 46.37.100, 46.37.110, 46.37.120, 46.37.130, 46.37.140, 46.37.150, 46.37.160, 46.37.170, 46.37.180, 46.37.184, 46.37.185, 46.37.186, 46.37.187, 46.37.188, 46.37.190, 46.37.193, 46.37.196, 46.37.200, 46.37.210, 46.37.215, 46.37.220, 46.37.230, 46.37.240, 46.37.260, 46.37.270, 46.37.280, 46.37.290, 46.37.300, 46.37.310, 46.37.340, 46.37.351, 46.37.360, 46.37.365, 46.37.369, 46.37.375, 46.37.380, 46.37.390, 46.37.400, 46.37.410, 46.37.420, 46.37.425, 46.37.430, 46.37.435, 46.37.440, 46.37.450, 46.37.460, 46.37.465, 46.37.467, 46.37.480, 46.37.490, 46.37.500, 46.37.510, 46.37.513, 46.37.517, 46.37.520, 46.37.522, 46.37.523, 46.37.524, 46.37.525, 46.37.527, 46.37.528, 46.37.529, 46.37.530, 46.37.535, 46.37.537, 46.37.539, 46.37.540, 46.37.550, 46.37.560,

46.37.570, 46.37.590, 46.37.600, 46.37.610, 46.44.010, 46.44.020, 46.44.030, 46.44.034, 46.44.036, 46.44.037, 46.44.041, 46.44.042, 46.44.047, 46.44.050, 46.44.060, 46.44.070, 46.44.090, 46.44.091, 46.44.092, 46.44.093, 46.44.095, 46.44.096, 46.44.100, 46.44.120, 46.44.130, 46.44.140, 46.44.170, 46.44.173, 46.44.175, 46.44.180, 46.48.170, 46.52.010, 46.52.020, 46.52.030, 46.52.040, 46.52.070, 46.52.080, 46.52.088, 46.52.090, 46.52.100, 46.79.120, and 46.80.010. [1991 c 293 § 8; 1991 c 118 § 1; 1990 c 250 § 78; 1988 c 24 § 1; 1987 c 30 § 1; 1986 c 24 § 1; 1985 c 19 § 1. Prior: 1984 c 154 § 6; 1984 c 108 § 1; 1983 c 30 § 2; 1982 c 25 § 1; 1980 c 65 § 2; 1977 ex.s. c 60 § 1; 1975 1st ex.s. c 54 § 50.]

Reviser's note: This section was amended by 1991 c 118 § 1 and by 1991 c 293 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1990 c 250: See note following RCW 46.16.301.

Intent—Application—Severability—1984 c 154: See notes following RCW 46.16.381.

46.90.300 Certain RCW sections adopted by reference. (Effective April 1, 1992.) The following sections of the Revised Code of Washington as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.12.070, 46.12.080, 46.12.101, 46.12.102, 46.12.260, 46.12.300, 46.12.310, 46.12.320, 46.12.330, 46.12.340, 46.12.350, 46.12.380, 46.16.010, 46.16.011, 46.16.025, 46.16.028, 46.16.030, 46.16.088, 46.16.135, 46.16.140, 46.16.145, 46.16.170, 46.16.180, 46.16.240, 46.16.260, 46.16.290, 46.16.316, 46.16.381, 46.16.390, 46.16.500, 46.16.505, 46.16.710, 46.20.021, 46.20.022, 46.20.025, 46.20.027, 46.20.031, 46.20.041, 46.20.045, 46.20.190, 46.20.220, 46.20.308, 46.20.336, 46.20.338, 46.20.342, 46.20.343, 46.20.344, 46.20.391, 46.20.394, 46.20.410, 46.20.420, 46.20.430, 46.20.435, 46.20.500, 46.20.510, 46.20.550, 46.20.750, 46.25.010, 46.25.020, 46.25.030, 46.25.040, 46.25.050, 46.25.110, 46.25.120, 46.25.170, 46.29.605, 46.30.010, 46.30.020, 46.30.030, 46.30.040, 46.32.060, 46.32.070, 46.37.010, 46.37.020, 46.37.030, 46.37.040, 46.37.050, 46.37.060, 46.37.070, 46.37.080, 46.37.090, 46.37.100, 46.37.110, 46.37.120, 46.37.130, 46.37.140, 46.37.150, 46.37.160, 46.37.170, 46.37.180, 46.37.184, 46.37.185, 46.37.186, 46.37.187, 46.37.188, 46.37.190, 46.37.193, 46.37.196, 46.37.200, 46.37.210, 46.37.215, 46.37.220, 46.37.230, 46.37.240, 46.37.260, 46.37.270, 46.37.280, 46.37.290, 46.37.300, 46.37.310, 46.37.340, 46.37.351, 46.37.360, 46.37.365, 46.37.369, 46.37.375, 46.37.380, 46.37.390, 46.37.400, 46.37.410, 46.37.420, 46.37.425, 46.37.430, 46.37.435, 46.37.440, 46.37.450, 46.37.460, 46.37.465, 46.37.467, 46.37.480, 46.37.490, 46.37.500, 46.37.510, 46.37.513, 46.37.517, 46.37.520, 46.37.522, 46.37.523, 46.37.524, 46.37.525, 46.37.527, 46.37.528, 46.37.529, 46.37.530, 46.37.535, 46.37.537, 46.37.539, 46.37.540, 46.37.550, 46.37.560, 46.37.570, 46.37.590, 46.37.600, 46.37.610, 46.44.010, 46.44.020, 46.44.030, 46.44.034, 46.44.036, 46.44.037, 46.44.041, 46.44.042, 46.44.047, 46.44.050, 46.44.060, 46.44.070, 46.44.090, 46.44.091, 46.44.092, 46.44.093, 46.44.095, 46.44.096, 46.44.100, 46.44.120, 46.44.130, 46.44.140, 46.44.170,

46.44.173, 46.44.175, 46.44.180, 46.48.170, 46.52.010, 46.52.020, 46.52.030, 46.52.040, 46.52.070, 46.52.080, 46.52.088, 46.52.090, 46.52.100, 46.79.120, and 46.80-.010. [1991 c 293 § 9; 1991 c 293 § 8; 1991 c 118 § 2; 1991 c 118 § 1; 1989 c 178 § 28; 1988 c 24 § 1; 1987 c 30 § 1; 1986 c 24 § 1; 1985 c 19 § 1. Prior: 1984 c 154 § 6; 1984 c 108 § 1; 1983 c 30 § 2; 1982 c 25 § 1; 1980 c 65 § 2; 1977 ex.s. c 60 § 1; 1975 1st ex.s. c 54 § 50.]

Reviser's note: This section was amended by 1991 c 118 § 1, 1991 c 118 § 2, 1991 c 293 § 8, and by 1991 c 293 § 9, each without reference to the other. All amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1991 c 293: "Section 9 of this act shall take effect April 1, 1992." [1991 c 293 § 11.]

Effective date—1991 c 118: "Sections 1 and 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately. Section 2 of this act shall take effect April 1, 1992." [1991 c 118 § 4.]

Severability—Effective dates—1989 c 178: See RCW 46.25.900 and 46.25.901.

Intent—Application—Severability—1984 c 154: See notes following RCW 46.16.381.

46.90.406 Certain RCW sections adopted by reference. The following sections of the Revised Code of Washington as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.55.010, 46.55.020, 46.55.030, 46.55.035, 46.55.040, 46.55.050, 46.55.060, 46.55.063, 46.55.070, 46.55.080, 46.55.085, 46.55.090, 46.55.100, 46.55.110, 46.55.113, 46.55.120, 46.55.130, 46.55.140, 46.55.150, 46.55.160, 46.55.170, 46.55.230, 46.55.240, 46.55.910, 46.61.015, 46.61.020, 46.61.021, 46.61.022, 46.61.025, 46.61.030, 46.61.035, 46.61.050, 46.61.055, 46.61.060, 46.61.065, 46.61.070, 46.61.072, 46.61.075, and 46.61-.080. [1991 c 118 § 3; 1988 c 24 § 2; 1986 c 24 § 2; 1980 c 65 § 3; 1977 ex.s. c 60 § 2; 1975 1st ex.s. c 54 § 64.]

Title 47

PUBLIC HIGHWAYS AND TRANSPORTATION

Chapters

- 47.01** Department of transportation.
- 47.02** Department buildings.
- 47.04** General provisions.
- 47.05** Priority programming for highway development.
- 47.12** Acquisition and disposition of state highway property.
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Chapter 47.01

DEPARTMENT OF TRANSPORTATION

Sections

- 47.01.250** Consultation with designated state officials—Report to governor and legislature.

47.01.250 Consultation with designated state officials—Report to governor and legislature. The chief of the Washington state patrol, the director of the traffic safety commission, the executive director of the county road administration board, and the director of licensing are designated as official consultants to the transportation commission so that the goals and activities of their respective agencies which relate to transportation are fully coordinated with other related responsibilities of the department of transportation. In this capacity, the chief of the Washington state patrol, the director of the traffic safety commission, the executive director of the county road administration board, and the director of licensing shall consult with the transportation commission and the secretary of transportation on the implications and impacts on the transportation related functions and duties of their respective agencies of any proposed comprehensive transportation plan, program, or policy.

In order to develop fully integrated, balanced, and coordinated transportation plans, programs, and budgets the chief of the Washington state patrol, the director of the traffic safety commission, the executive director of the county road administration board, and the director of licensing shall consult with the secretary of transportation on the matter of relative priorities during the development of their respective agencies' plans, programs, and budgets as they pertain to transportation activities. The secretary of transportation shall provide written comments to the governor and the legislature on the extent to which the state patrol's, the traffic safety commission's, the county road administration board's, and the department of licensing's final plans, programs, and budgets are compatible with the priorities established in the department of transportation's final plans, programs, and budgets. [1990 c 266 § 5; 1979 c 158 § 204; 1977 ex.s. c 151 § 26.]

Chapter 47.02
DEPARTMENT BUILDINGS

Sections

47.02.120	District 1 headquarters bonds—Issuance and sale.
47.02.130	District 1 headquarters bonds—Uses of proceeds.
47.02.140	District 1 headquarters bonds—Duties of state finance committee.
47.02.150	District 1 headquarters bonds—Proceeds, deposit and use.
47.02.160	District 1 headquarters bonds—Statement of general obligation—Pledge of excise taxes.
47.02.170	District 1 headquarters bonds—Repayment procedure—Designated funds.
47.02.180	District 1 headquarters bonds—Reimbursement of motor vehicle fund.
47.02.190	District 1 headquarters bonds—Equal charges against certain revenues.

47.02.120 District 1 headquarters bonds—Issuance and sale. For the purpose of providing funds for the acquisition of headquarters facilities for district 1 of the department of transportation and costs incidental thereto, together with all improvements and equipment required to make the facilities suitable for the department's use, there shall be issued and sold upon the request of the Washington transportation commission a total of fifteen million dollars of general obligation bonds of the state of Washington. [1990 c 293 § 1.]

Severability—1990 c 293: "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." [1990 c 293 § 10.]

47.02.130 District 1 headquarters bonds—Uses of proceeds. Authorized uses of proceeds from the sale of bonds authorized in RCW 47.02.120 through 47.02.190 include but are not limited to repayment to the motor vehicle fund for the loan from the motor vehicle fund to the transportation capital facilities account in the motor vehicle fund provided in the supplemental transportation budget for the initial financing of the headquarters facilities. [1990 c 293 § 2.]

Severability—1990 c 293: See note following RCW 47.02.120.

47.02.140 District 1 headquarters bonds—Duties of state finance committee. Upon the request of the transportation commission, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds authorized by RCW 47.02.120 through 47.02.190 in accordance with chapter 39.42 RCW. Bonds authorized by RCW 47.02.120 through 47.02.190 shall be sold in such manner, at such time or times, in such amounts, and at such price as the state finance committee shall determine. Except for the purpose of repaying the loan from the motor vehicle fund, no such bonds may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

The state finance committee shall consider the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life

of the project for which they were issued. [1990 c 293 § 3.]

Severability—1990 c 293: See note following RCW 47.02.120.

47.02.150 District 1 headquarters bonds—Proceeds, deposit and use. The proceeds from the sale of bonds authorized by RCW 47.02.120 through 47.02.190 shall be available only for the purposes enumerated in RCW 47.02.120 and 47.02.130; for the payment of bond anticipation notes, if any; and for the payment of bond issuance costs, including the costs of underwriting. Proceeds required to repay the motor vehicle fund loan shall be deposited in the motor vehicle fund and remaining proceeds shall be deposited in the transportation capital facilities account. [1990 c 293 § 4.]

Severability—1990 c 293: See note following RCW 47.02.120.

47.02.160 District 1 headquarters bonds—Statement of general obligation—Pledge of excise taxes. Bonds issued under the authority of RCW 47.02.120 through 47.02.190 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on the bonds shall be first payable in the manner provided in RCW 47.02.120 through 47.02.190 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36, 82.37, and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.02.120 through 47.02.190, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.02.120 through 47.02.190. [1990 c 293 § 5.]

Severability—1990 c 293: See note following RCW 47.02.120.

47.02.170 District 1 headquarters bonds—Repayment procedure—Designated funds. Both principal and interest on the bonds issued for the purposes of RCW 47.02.120 through 47.02.190 shall be payable from the highway bond retirement fund. The state finance committee may provide that a special account be created in the fund to facilitate payment of the principal and interest. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required for principal and interest on the bonds in accordance with the bond proceedings. The state treasurer shall withdraw revenues from the motor vehicle fund and deposit in the highway bond retirement fund, or a special account in the fund, such amounts, and at such times, as are required by the bond proceedings.

Any funds required for bond retirement or interest on the bonds authorized by RCW 47.02.120 through 47.02.190 shall be taken from that portion of the motor

vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the state under RCW 46.68.130. Funds required shall never constitute a charge against any other allocations of motor vehicle fuel and special fuel tax revenues to the state, counties, cities, and towns unless the amount arising from excise taxes on motor vehicle and special fuels distributed to the state under RCW 46.68.130 proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1990 c 293 § 6.]

Severability—1990 c 293: See note following RCW 47.02.120.

47.02.180 District 1 headquarters bonds—Reimbursement of motor vehicle fund. When the state treasurer transfers funds from the motor vehicle fund to the highway bond retirement fund to pay principal and interest on the bonds authorized by RCW 47.02.120 through 47.02.190, the state treasurer shall at the same time reimburse the motor vehicle fund in an identical amount from the transportation capital facilities account. This obligation to reimburse the motor vehicle fund shall constitute a first and prior charge against the funds within and accruing to the transportation capital facilities account. All funds reimbursed to the motor vehicle fund shall be distributed to the state for expenditures authorized by RCW 46.68.130. [1990 c 293 § 7.]

Severability—1990 c 293: See note following RCW 47.02.120.

47.02.190 District 1 headquarters bonds—Equal charges against certain revenues. Bonds issued under the authority of RCW 47.02.120 through 47.02.180 and this section and any other general obligation bonds of the state of Washington that have been or that may be authorized and that pledge motor vehicle and special fuels excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuels excise taxes. [1990 c 293 § 8.]

Severability—1990 c 293: See note following RCW 47.02.120.

Chapter 47.04

GENERAL PROVISIONS

Sections

47.04.190 Bicycle transportation management program.
47.04.200 Bicycle program manager.

47.04.190 Bicycle transportation management program. (1) The department of transportation is responsible for the initiation, coordination, and operation of a bicycle transportation management program.

(2) To assist in the operation of the bicycle transportation management program, a full-time staff position of state bicycle program manager is established within the department of transportation. [1991 c 214 § 5.]

Bicycle awareness program: RCW 43.43.390.

Pavement marking standards: RCW 47.36.280.

[1990-91 RCW Supp—page 1174]

47.04.200 Bicycle program manager. The state bicycle program manager shall:

(1) Design programs that encourage the use of bicycling for transportation;

(2) Coordinate bicycle safety related programs and bicycle tourism programs in all state agencies;

(3) Assist the department of transportation and the cities and counties of the state in assigning priorities to, programming, and developing bicycle-related projects;

(4) Serve as a clearinghouse for bicycle program information and resources;

(5) Provide assistance in revising and updating bicycle material of the superintendent of public instruction and the state patrol;

(6) Promote the use of bicycle helmets of a type certified to meet the requirements of standard Z-90.4 of the American National Standards Institute or such subsequent nationally recognized standard for bicycle helmet performance; and

(7) Promote bicycle safety equipment. [1991 c 214 § 6.]

Chapter 47.05

PRIORITY PROGRAMMING FOR HIGHWAY DEVELOPMENT

Sections

47.05.070 Budget recommendation and six-year program and plan to be presented to governor and legislature—Contents. (Effective April 1, 1992.)

47.05.070 Budget recommendation and six-year program and plan to be presented to governor and legislature—Contents. (Effective April 1, 1992.) The transportation commission shall approve and present to the governor and to the legislature prior to its convening, a recommended budget for the ensuing fiscal period as well as the comprehensive six-year program and financial plan required under RCW 44.40.070, 44.40.080, 47.05.030, and 47.05.040. The budget shall include details of proposed expenditures, and performance and public service criteria for construction, maintenance, and planning activities in consonance with the comprehensive six-year program and financial plan. [1991 c 358 § 5; 1983 1st ex.s. c 53 § 31; 1979 ex.s. c 122 § 7; 1977 ex.s. c 151 § 45; 1973 2nd ex.s. c 12 § 7; 1963 c 173 § 7.]

Effective date—1991 c 358: See note following RCW 43.88.030.

Severability—1983 1st ex.s. c 53: See note following RCW 47.10.802.

Severability—1979 ex.s. c 122: See note following RCW 47.05.021.

Chapter 47.12

ACQUISITION AND DISPOSITION OF STATE HIGHWAY PROPERTY

Sections

47.12.125 Lease of unused highway land or air space—Disposition of proceeds.

47.12.242 "Advance right of way acquisition" defined.

47.12.244 Advance right of way revolving fund.

- 47.12.246 Reimbursement to advance right of way revolving fund.
47.12.249 Reports on property purchases.

47.12.125 Lease of unused highway land or air space—Disposition of proceeds. All moneys paid to the state of Washington under any of the provisions of RCW 47.12.120 shall be deposited in the department's advance right of way revolving fund, except moneys that are subject to federal aid reimbursement, which shall be deposited in the motor vehicle fund, and except that moneys received from rental of capital facilities properties shall be deposited in the transportation capital facilities account as defined in chapter 47.13 RCW. [1991 c 291 § 3; 1961 c 13 § 47.12.125. Prior: 1949 c 162 § 2; Rem. Supp. 1949 § 6400–123.]

47.12.242 "Advance right of way acquisition" defined. The term "advance right of way acquisition" means the acquisition of property and property rights, generally not more than ten years in advance of programmed highway construction projects, together with the engineering costs necessary for such advance right of way acquisition. Any property or property rights purchased must be in designated highway transportation corridors and be for projects approved by the commission as part of the state's six-year plan or included in the state's route development planning effort. [1991 c 291 § 1; 1969 ex.s. c 197 § 6.]

47.12.244 Advance right of way revolving fund. There is created the "advance right of way revolving fund" in the custody of the treasurer, into which the department is authorized to deposit directly and expend without appropriation:

(1) An initial deposit of ten million dollars from the motor vehicle fund included in the department of transportation's 1991–93 budget;

(2) All moneys received by the department as rental income from real properties that are not subject to federal aid reimbursement, except moneys received from rental of capital facilities properties as defined in chapter 47.13 RCW; and

(3) Any federal moneys available for acquisition of right of way for future construction under the provisions of section 108 of Title 23, United States Code. [1991 c 291 § 2; 1984 c 7 § 125; 1969 ex.s. c 197 § 7.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.246 Reimbursement to advance right of way revolving fund. (1) After any properties or property rights are acquired from funds in the advance right of way revolving fund, the department shall manage the properties in accordance with sound business practices. Funds received from interim management of the properties shall be deposited in the advance right of way revolving fund.

(2) When the department proceeds with the construction of a highway which will require the use of any of the property so acquired, the department shall reimburse the advance right of way revolving fund, from other funds available to it, the current appraised value of the

property or property rights required for the project together with damages caused to the remainder by the acquisition after offsetting against all such compensation and damages the special benefits, if any, accruing to the remainder by reason of the state highway being constructed.

(3) When the department determines that any properties or property rights acquired from funds in the advance right of way revolving fund will not be required for a highway construction project the department may sell the property at fair market value in accordance with requirements of RCW 47.12.063. All proceeds of such sales shall be deposited in the advance right of way revolving fund.

(4) Deposits in the fund may be reexpended as provided in RCW 47.12.180, 47.12.200 through 47.12.230, and 47.12.242 through 47.12.248 without further or additional appropriations. [1991 c 291 § 4; 1984 c 7 § 126; 1969 ex.s. c 197 § 9.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.249 Reports on property purchases. At the end of each biennium the department shall report to the legislature and the office of financial management:

- (1) Which properties were purchased and why;
- (2) Expenditures for the acquired parcels; and
- (3) Estimated savings to the state. [1991 c 291 § 5.]

Chapter 47.17

STATE HIGHWAY ROUTES

Sections

47.17.001	Criteria for changes to system.
47.17.077	State route No. 19. (Effective April 1, 1992.)
47.17.115	State route No. 27. (Effective April 1, 1992.)
47.17.140	State route No. 90—American Veterans Memorial Highway.
47.17.153	State route No. 96. (Effective April 1, 1992.)
47.17.163	State route No. 100. (Effective April 1, 1992.)
47.17.170	State route No. 103. (Effective April 1, 1992.)
47.17.212	State route No. 110. (Effective April 1, 1992.)
47.17.216	State route No. 113. (Effective April 1, 1992.)
47.17.219	State route No. 116. (Effective April 1, 1992.)
47.17.221	State route No. 117. (Effective April 1, 1992.)
47.17.223	State route No. 119. (Effective April 1, 1992.)
47.17.225	State route No. 121. (Effective April 1, 1992.)
47.17.227	State route No. 122. (Effective April 1, 1992.)
47.17.245	Repealed. (Effective April 1, 1992.)
47.17.255	State route No. 128. (Effective until April 1, 1992.)
47.17.255	State route No. 128. (Effective April 1, 1992.)
47.17.262	State route No. 131. (Effective April 1, 1992.)
47.17.270	Repealed. (Effective April 1, 1992.)
47.17.305	State route No. 160. (Effective April 1, 1992.)
47.17.317	State route No. 163. (Effective April 1, 1992.)
47.17.330	State route No. 167. (Effective April 1, 1992.)
47.17.370	State route No. 181. (Effective April 1, 1992.)
47.17.375	State route No. 193. (Effective until April 1, 1992.)
47.17.375	State route No. 193. (Effective April 1, 1992.)
47.17.377	State route No. 194. (Effective April 1, 1992.)
47.17.410	State route No. 207. (Effective April 1, 1992.)
47.17.415	Repealed. (Effective April 1, 1992.)
47.17.420	Repealed. (Effective April 1, 1992.)
47.17.436	State route No. 225. (Effective April 1, 1992.)
47.17.450	Repealed. (Effective April 1, 1992.)
47.17.453	Repealed. (Effective April 1, 1992.)
47.17.460	State route No. 241. (Effective April 1, 1992.)
47.17.481	State route No. 262. (Effective April 1, 1992.)

47.17.482	State route No. 263. (Effective April 1, 1992.)
47.17.503	State route No. 278. (Effective April 1, 1992.)
47.17.517	State route No. 285. (Effective April 1, 1992.)
47.17.550	State route No. 303. (Effective April 1, 1992.)
47.17.555	Repealed. (Effective April 1, 1992.)
47.17.566	State route No. 307. (Effective April 1, 1992.)
47.17.569	State route No. 310. (Effective April 1, 1992.)
47.17.577	State route No. 397. (Effective April 1, 1992.)
47.17.590	Repealed. (Effective April 1, 1992.)
47.17.600	Repealed. (Effective April 1, 1992.)
47.17.615	State route No. 411. (Effective April 1, 1992.)
47.17.620	Repealed. (Effective April 1, 1992.)
47.17.625	State route No. 432. (Effective April 1, 1992.)
47.17.630	State route No. 433. (Effective April 1, 1992.)
47.17.640	State route No. 501—Erwin O. Rieger Memorial Highway.
47.17.650	State route No. 503. (Effective April 1, 1992.)
47.17.660	State route No. 505. (Effective April 1, 1992.)
47.17.680	State route No. 509. (Effective April 1, 1992.)
47.17.695	State route No. 513. (Effective April 1, 1992.)
47.17.700	Repealed. (Effective April 1, 1992.)
47.17.717	State route No. 519. (Effective April 1, 1992.)
47.17.727	State route No. 523. (Effective April 1, 1992.)
47.17.730	State route No. 524. (Effective April 1, 1992.)
47.17.752	State route No. 529. (Effective April 1, 1992.)
47.17.755	State route No. 530. (Effective April 1, 1992.)
47.17.757	State route No. 531. (Effective April 1, 1992.)
47.17.807	State route No. 548. (Effective April 1, 1992.)
47.17.810	Repealed. (Effective April 1, 1992.)
47.17.820	State route No. 706—Road to Paradise.
47.17.824	State route No. 823. (Effective April 1, 1992.)
47.17.825	State route No. 900. (Effective April 1, 1992.)
47.17.830	State route No. 901. (Effective April 1, 1992.)
47.17.835	State route No. 902. (Effective April 1, 1992.)
47.17.855	State route No. 908. (Effective April 1, 1992.)
47.17.919	State route No. 971. (Effective April 1, 1992.)
47.17.960	Local bridges—Department responsibility. (Effective April 1, 1992.)

47.17.001 Criteria for changes to system. In considering whether to make additions, deletions, or other changes to the state highway system, the legislature shall be guided by the following criteria as contained in the Road Jurisdiction Committee Phase I report to the legislature dated January 1987:

(1) A rural highway route should be designated as a state highway if it meets any of the following criteria:

(a) Is designated as part of the national system of interstate and defense highways (popularly called the interstate system); or

(b) Is designated as part of the system of numbered United States routes; or

(c) Contains an international border crossing that is open twelve or more hours each day.

(2) A rural highway route may be designated as a state highway if it is part of an integrated system of roads and:

(a) Carries in excess of three hundred thousand tons annually and provides primary access to a rural port or intermodal freight terminal;

(b) Provides a major cross-connection between existing state highways; or

(c) Connects places exhibiting one or more of the following characteristics:

(i) A population center of one thousand or greater;

(ii) An area or aggregation of areas having a population equivalency of one thousand or more, such as, but not limited to, recreation areas, military installations, and so forth;

(iii) A county seat;

(iv) A major commercial-industrial terminal in a rural area with a population equivalency of one thousand or greater.

(3) An urban highway route that meets any of the following criteria should be designated as part of the state highway system:

(a) Is designated as part of the interstate system;

(b) Is designated as part of the system of numbered United States routes;

(c) Is an urban extension of a rural state highway into or through an urban area and is necessary to form an integrated system of state highways;

(d) Is a principal arterial that is a connecting link between two state highways and serves regionally oriented through traffic in urbanized areas with a population of fifty thousand or greater, or is a spur that serves regionally oriented traffic in urbanized areas.

(4) The following guidelines are intended to be used as a basis for interpreting and applying the criteria to specific routes:

(a) For any route wholly within one or more contiguous jurisdictions which would be proposed for transfer to the state highway system under these criteria, if local officials prefer, responsibility will remain at the local level.

(b) State highway routes maintain continuity of the system by being composed of routes that join other state routes at both ends or to arterial routes in the states of Oregon and Idaho and the Province of British Columbia.

(c) Public facilities may be considered to be served if they are within approximately two miles of a state highway.

(d) Exceptions may be made to include:

(i) Rural spurs as state highways if they meet the criteria relative to serving population centers of one thousand or greater population or activity centers with population equivalencies or an aggregated population of one thousand or greater;

(ii) Urban spurs as state highways that provide needed access to Washington state ferry terminals, state parks, major seaports, and trunk airports; and

(iii) Urban connecting links as state highways that function as needed bypass routing of regionally oriented through traffic and benefit truck routing, capacity alternative, business congestion, and geometric deficiencies.

(e) In urban and urbanized areas:

(i) Unless they are significant regional traffic generators, public facilities such as state hospitals, state correction centers, state universities, ferry terminals, and military bases do not constitute a criteria for establishment of a state highway; and

(ii) There may be no more than one parallel nonaccess controlled facility in the same corridor as a freeway or limited access facility as designated by the metropolitan planning organization.

(f) When there is a choice of two or more routes between population centers, the state route designation shall normally be based on the following considerations:

(i) The ability to handle higher traffic volumes;

- (ii) The higher ability to accommodate further development or expansion along the existing alignment;
- (iii) The most direct route and the lowest travel time;
- (iv) The route that serves traffic with the most interstate, state-wide, and interregional significance;
- (v) The route that provides the optimal spacing between other state routes; and
- (vi) The route that best serves the comprehensive plan for community development in those areas where such a plan has been developed and adopted. [1990 c 233 § 1.]

47.17.077 State route No. 19. (Effective April 1, 1992.) A state highway to be known as state route number 19 is established as follows:

Beginning at a junction with state route number 104, thence northerly to a junction with state route number 20 near Old Fort Townsend state park. [1991 c 342 § 1.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.115 State route No. 27. (Effective April 1, 1992.) A state highway to be known as state route number 27 is established as follows:

Beginning at a junction with state route number 195 in the vicinity of Pullman, thence northerly to a junction with state route number 271 in the vicinity of Oakesdale; also

From a junction with state route number 271 at Oakesdale, thence northerly by way of Tekoa, Latah, Fairfield, and Rockford to a junction with state route number 290 in the vicinity of Millwood. [1991 c 342 § 2; 1979 ex.s. c 195 § 1; 1975 c 63 § 2; 1970 ex.s. c 51 § 24.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.140 State route No. 90—American Veterans Memorial Highway. A state highway to be known as state route number 90 and designated as the American Veterans Memorial Highway is established as follows:

Beginning at a junction with state route number 5, thence, via the west approach to the Lake Washington bridge in Seattle, in an easterly direction by way of Mercer Island, North Bend, Snoqualmie pass, Ellensburg, Vantage, Moses Lake, Ritzville, Sprague and Spokane to the Washington-Idaho boundary line. [1991 c 56 § 2; 1971 ex.s. c 73 § 2; 1970 ex.s. c 51 § 29.]

Purpose—1991 c 56: "In order to create a great memorial and tribute to American veterans, it is proposed that the Washington state portion of Interstate 90 be renamed in their honor, to become the westernmost portion of a memorial highway reaching across the United States." [1991 c 56 § 1.]

47.17.153 State route No. 96. (Effective April 1, 1992.) A state highway to be known as state route number 96 is established as follows:

Beginning at a junction with state route number 5 in the vicinity south of Everett, thence easterly to a junction with state route number 9 in the vicinity of Ree's Corner. [1991 c 342 § 3.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.163 State route No. 100. (Effective April 1, 1992.) A state highway to be known as state route number 100 is established as follows:

Beginning at a junction with state route number 101 in Ilwaco, thence westerly and southerly to Fort Canby state park; also

Beginning at a junction with state route number 100 in Ilwaco, thence southerly to Fort Canby state park. [1991 c 342 § 4.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.170 State route No. 103. (Effective April 1, 1992.) A state highway to be known as state route number 103 is established as follows:

Beginning at a junction with state route number 101 at Seaview, thence northerly by way of Long Beach to Leadbetter Point state park. [1991 c 342 § 5; 1970 ex.s. c 51 § 35.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.212 State route No. 110. (Effective April 1, 1992.) A state highway to be known as state route number 110 is established as follows:

Beginning at a junction with state route number 101 in the vicinity north of Forks, thence westerly to the Olympic national park boundary in the vicinity of La Push; also

Beginning at a junction with state route number 110 near the Quillayute river, thence westerly to the Olympic national park boundary in the vicinity of Moro. [1991 c 342 § 6.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.216 State route No. 113. (Effective April 1, 1992.) A state highway to be known as state route number 113 is established as follows:

Beginning at a junction with state route number 101 in the vicinity of Sappho, thence northerly to a junction with state route number 112 in the vicinity of the Pysht River. [1991 c 342 § 7.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.219 State route No. 116. (Effective April 1, 1992.) A state highway to be known as state route number 116 is established as follows:

Beginning at a junction with state route number 19 in the vicinity of Irondale, thence easterly and northerly to Fort Flagler state park. [1991 c 342 § 8.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.221 State route No. 117. (Effective April 1, 1992.) A state highway to be known as state route number 117 is established as follows:

Beginning at a junction with state route number 101 in Port Angeles, thence northerly to the port of Port Angeles at Marine Drive. [1991 c 342 § 9.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.223 State route No. 119. (Effective April 1, 1992.) A state highway to be known as state route number 119 is established as follows:

Beginning at a junction with state route number 101 near Hoodspert, thence northwesterly to the Mount Rose development intersection. [1991 c 342 § 10.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.225 State route No. 121. (Effective April 1, 1992.) A state highway to be known as state route number 121 is established as follows:

Beginning at a junction with state route number 5 in the vicinity of Maytown, thence easterly, northerly, and westerly by way of Millersylvania state park to a junction with state route number 5 south of Tumwater. [1991 c 342 § 11; 1970 ex.s. c 51 § 46.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.227 State route No. 122. (Effective April 1, 1992.) A state highway to be known as state route number 122 is established as follows:

Beginning at a junction with state route number 12 near Mayfield dam, thence northeasterly and southerly by way of Mayfield to a junction with state route number 12 in Mossyrock. [1991 c 342 § 12.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.245 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

47.17.255 State route No. 128. (Effective until April 1, 1992.) A state highway to be known as state route number 128 is established as follows:

Beginning at a junction with state route number 12 at Pomeroy, thence southeasterly to Peola, thence northeasterly and easterly by way of the Red Wolf crossing to the Idaho state line. [1990 c 108 § 1; 1970 ex.s. c 51 § 52.]

47.17.255 State route No. 128. (Effective April 1, 1992.) A state highway to be known as state route number 128 is established as follows:

Beginning at a junction with state route number 12 in Clarkston, thence northeasterly and easterly by way of the Red Wolf crossing to the Idaho state line. [1991 c 342 § 13; 1990 c 108 § 1; 1970 ex.s. c 51 § 52.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.262 State route No. 131. (Effective April 1, 1992.) A state highway to be known as state route number 131 is established as follows:

Beginning at the Gifford Pinchot national forest boundary south of Randle, thence northerly to a junction with state route number 12 in Randle. [1991 c 342 § 14.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.270 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

47.17.305 State route No. 160. (Effective April 1, 1992.) A state highway to be known as state route number 160 is established as follows:

Beginning at a junction with state route number 16 near Port Orchard, thence easterly to the Washington state ferry dock at Point Southworth. [1991 c 342 § 15; 1970 ex.s. c 51 § 62.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.317 State route No. 163. (Effective April 1, 1992.) A state highway to be known as state route number 163 is established as follows:

Beginning at a junction with state route number 16 in Tacoma, thence northerly to the Point Defiance ferry terminal. [1991 c 342 § 16.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.330 State route No. 167. (Effective April 1, 1992.) A state highway to be known as state route number 167 is established as follows:

Beginning at a junction with state route number 5 in the vicinity of Tacoma, thence easterly by way of the vicinity of Puyallup and Sumner, thence northerly by way of the vicinity of Auburn and Kent to a junction with state route number 900 in the vicinity of Renton. [1991 c 342 § 17; 1979 ex.s. c 33 § 8; 1970 ex.s. c 51 § 67.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.370 State route No. 181. (Effective April 1, 1992.) A state highway to be known as state route number 181 is established as follows:

Beginning at a junction with state route number 516 in the vicinity of Kent, thence northerly to a junction with state route number 405 in the vicinity of Tukwila. [1991 c 342 § 18; 1979 ex.s. c 192 § 4; 1971 ex.s. c 73 § 9; 1970 ex.s. c 51 § 75.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

Effective dates—1979 ex.s. c 192: See note following RCW 44.40.070.

47.17.375 State route No. 193. (Effective until April 1, 1992.) A state highway to be known as state route number 193 is established as follows:

Beginning at a junction with state route number 128 in the vicinity of the Red Wolf crossing, thence westerly and northerly by way of Steptoe canyon to a junction of state route number 195 in the vicinity of Colton. Until such time as state route number 193 between Colton and Clarkston is actually constructed on the location adopted by the department, no existing county roads may be maintained or improved by the department as a temporary route of state route number 193. [1990 c 108 § 2; 1984 c 7 § 133; 1970 ex.s. c 51 § 76.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.17.375 State route No. 193. (Effective April 1, 1992.) A state highway to be known as state route number 193 is established as follows:

Beginning at a junction with state route number 128 in the vicinity of the Red Wolf crossing, thence westerly to the port of Wilma. [1991 c 342 § 19; 1990 c 108 § 2; 1984 c 7 § 133; 1970 ex.s. c 51 § 76.]

Effective dates—1991 c 342: See note following RCW 47.26.167.
Severability—1984 c 7: See note following RCW 47.01.141.

47.17.377 State route No. 194. (Effective April 1, 1992.) A state highway to be known as state route number 194 is established as follows:

Beginning at the port of Almota, thence northerly and easterly to a junction with state route number 195 in the vicinity of Pullman. [1991 c 342 § 20.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.410 State route No. 207. (Effective April 1, 1992.) A state highway to be known as state route number 207 is established as follows:

Beginning at a junction with state route number 2 in the vicinity north of Winton, thence northerly to Lake Wenatchee state park. [1991 c 342 § 21; 1970 ex.s. c 51 § 83.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.415 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

47.17.420 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

47.17.436 State route No. 225. (Effective April 1, 1992.) A state highway to be known as state route number 225 is established as follows:

Beginning at a junction with state route number 224 in Kiona, thence northeasterly by way of Benton City to a junction with state route number 240 near Horn Rapids dam. [1991 c 342 § 22.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.450 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

47.17.453 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

47.17.460 State route No. 241. (Effective April 1, 1992.) A state highway to be known as state route number 241 is established as follows:

Beginning at a junction with state route number 22 in Mabton, thence northerly and northeasterly by way of Sunnyside to a junction with state route number 24. [1991 c 342 § 23; 1987 c 199 § 20; 1970 ex.s. c 51 § 93.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.481 State route No. 262. (Effective April 1, 1992.) A state highway to be known as state route number 262 is established as follows:

Beginning at a junction with state route number 26 east of Royal City, thence northerly and easterly to a junction with state route number 17 west of Warden. [1991 c 342 § 24.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.482 State route No. 263. (Effective April 1, 1992.) A state highway to be known as state route number 263 is established as follows:

Beginning at the port of Windust, thence easterly and northerly to a junction with state route number 260 in Kahlotus. [1991 c 342 § 25.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.503 State route No. 278. (Effective April 1, 1992.) A state highway to be known as state route number 278 is established as follows:

Beginning at a junction with state route number 27 in Rockford, thence easterly and southerly to the Washington-Idaho boundary. [1991 c 342 § 26.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.517 State route No. 285. (Effective April 1, 1992.) A state highway to be known as state route number 285 is established as follows:

Beginning at a junction with state route number 28 in East Wenatchee, thence westerly across the Columbia river and northwesterly to a junction with state route number 2 in Wenatchee. [1991 c 342 § 27; 1977 ex.s. c 224 § 1.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.550 State route No. 303. (Effective April 1, 1992.) A state highway to be known as state route number 303 is established as follows:

Beginning at a junction with state route number 304 at Bremerton, thence by way of the Warren Avenue bridge across the Port Washington Narrows northerly to a junction with state route number 3 in the vicinity north of Silverdale. [1991 c 342 § 28; 1971 ex.s. c 73 § 14; 1970 ex.s. c 51 § 111.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.555 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

47.17.566 State route No. 307. (Effective April 1, 1992.) A state highway to be known as state route number 307 is established as follows:

Beginning at a junction with state route number 305 at Poulsbo, thence northeasterly to a junction with state route number 104 near Miller Lake. [1991 c 342 § 29.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.569 State route No. 310. (Effective April 1, 1992.) A state highway to be known as state route number 310 is established as follows:

Beginning at a junction with state route number 3 near Oyster Bay, thence easterly to a junction with state route number 304 in Bremerton. [1991 c 342 § 30.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.577 State route No. 397. (Effective April 1, 1992.) A state highway to be known as state route number 397 is established as follows:

Beginning at Game Farm Road in the vicinity of Finely, thence northwesterly and northerly across the Columbia River, thence easterly and northerly to a junction with state route number 395 in Pasco. [1991 c 342 § 31.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.590 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

47.17.600 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

47.17.615 State route No. 411. (Effective April 1, 1992.) A state highway to be known as state route number 411 is established as follows:

Beginning at a junction with state route number 432 in Longview, thence northerly to a junction with state route number 5 at Castle Rock. [1991 c 342 § 32; 1970 ex.s. c 51 § 124.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.620 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

47.17.625 State route No. 432. (Effective April 1, 1992.) A state highway to be known as state route number 432 is established as follows:

Beginning at a junction with state route number 4 in the vicinity west of Longview, thence southeasterly to a junction with state route number 5 south of Kelso. [1991 c 342 § 33; 1970 ex.s. c 51 § 126.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.630 State route No. 433. (Effective April 1, 1992.) A state highway to be known as state route number 433 is established as follows:

Beginning at the Washington–Oregon boundary on the interstate bridge at Longview, thence northerly to a junction with state route number 432 in Longview. [1991 c 342 § 34; 1987 c 199 § 25; 1970 ex.s. c 51 § 127.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.640 State route No. 501—Erwin O. Rieger Memorial Highway. A state highway to be known as state route number 501 is established as follows:

Beginning at a junction with state route number 5 at Vancouver, thence northerly by way of Lower River Road and an extension thereof to Ridgefield, thence easterly to a junction with state route number 5 in the vicinity south of La Center. That portion of state route number 501 from the northerly junction of N.W. Lower River Road to the Ridgefield city limits is designated "the Erwin O. Rieger Memorial Highway." The department may enter into an agreement with the Port of Vancouver, Clark county, or the United States Army Engineers, or any combination thereof, to obtain material dredged from the Columbia river and have it stockpiled at no expense to the state. [1991 c 78 § 1; 1984 c 7 § 136; 1970 ex.s. c 51 § 129.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.17.650 State route No. 503. (Effective April 1, 1992.) A state highway to be known as state route number 503 is established as follows:

Beginning at a junction with state route number 500 at Orchards, thence northerly to a junction with state route number 502 at Battle Ground, thence northerly to Amboy, thence northeasterly by way of Cougar to the Cowlitz–Skamania county line; also

Beginning at a junction with state route number 503 in the vicinity of Yale, thence westerly to a junction with state route number 5 in the vicinity of Woodland. [1991 c 342 § 35; 1975 c 63 § 6; 1970 ex.s. c 51 § 131.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.660 State route No. 505. (Effective April 1, 1992.) A state highway to be known as state route number 505 is established as follows:

Beginning in Winlock, thence via Toledo, easterly and southerly to a junction with state route number 504 in the vicinity north of Toutle. [1991 c 342 § 36; 1970 ex.s. c 51 § 133.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.680 State route No. 509. (Effective April 1, 1992.) A state highway to be known as state route number 509 is established as follows:

Beginning at a junction with state route number 705 at Tacoma, thence northeasterly to a junction with state route number 99 in the vicinity of Redondo; also

From a junction with state route number 516 at Des Moines, thence northerly to a junction with state route number 99 in Seattle. [1991 c 342 § 37; 1979 ex.s. c 33 § 14; 1970 ex.s. c 51 § 137.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.695 State route No. 513. (Effective April 1, 1992.) A state highway to be known as state route number 513 is established as follows:

Beginning at a junction with state route number 520 in Seattle, thence northerly and easterly to the vicinity

of Sand Point. [1991 c 342 § 38; 1971 ex.s. c 73 § 16; 1970 ex.s. c 51 § 140.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.700 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

47.17.717 State route No. 519. (Effective April 1, 1992.) A state highway to be known as state route number 519 is established as follows:

Beginning at a junction with state route number 90 in Seattle, thence westerly, and northerly to the Washington state ferry terminal. [1991 c 342 § 39.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.727 State route No. 523. (Effective April 1, 1992.) A state highway to be known as state route number 523 is established as follows:

Beginning at a junction with state route number 99 and Northeast 145th Street in Seattle, thence easterly to a junction with state route number 522. [1991 c 342 § 40.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.730 State route No. 524. (Effective April 1, 1992.) A state highway to be known as state route number 524 is established as follows:

Beginning at a junction with state route number 104 at Edmonds, thence northeasterly to a junction with state route number 5 in the vicinity of Lynnwood, thence easterly to a junction with state route number 522 near Maltby. [1991 c 342 § 41; 1984 c 7 § 137; 1970 ex.s. c 51 § 147.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

Severability—1984 c 7: See note following RCW 47.01.141.

47.17.752 State route No. 529. (Effective April 1, 1992.) A state highway to be known as state route number 529 is established as follows:

Beginning at a junction with state route number 5 in Everett, thence westerly and northerly through Everett to a junction with state route number 528 in Marysville. [1991 c 342 § 42; 1971 ex.s. c 73 § 19.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.755 State route No. 530. (Effective April 1, 1992.) A state highway to be known as state route number 530 is established as follows:

Beginning at a junction with state route number 5 in the vicinity west of Arlington, thence easterly and northerly by way of Darrington to a junction with state route number 20 in the vicinity of Rockport. [1991 c 342 § 43; 1983 c 131 § 1; 1971 ex.s. c 73 § 20; 1970 ex.s. c 51 § 152.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.757 State route No. 531. (Effective April 1, 1992.) A state highway to be known as state route number 531 is established as follows:

Beginning at Wenberg state park, thence northerly and easterly to a junction with state route number 9 in the vicinity north of Marysville. [1991 c 342 § 44.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.807 State route No. 548. (Effective April 1, 1992.) A state highway to be known as state route number 548 is established as follows:

Beginning at a junction with state route number 5 in the vicinity north of Ferndale, thence westerly and northerly to a junction with state route number 5 in Blaine. [1991 c 342 § 45.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.810 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

47.17.820 State route No. 706—Road to Paradise. A state highway to be known as state route number 706, designated the Road to Paradise, is established as follows:

Beginning at a junction with state route number 7 at Elbe, thence easterly to a southwest entrance to Mt. Rainier National Park. [1990 c 97 § 1; 1970 ex.s. c 51 § 165.]

47.17.824 State route No. 823. (Effective April 1, 1992.) A state highway to be known as state route number 823 is established as follows:

Beginning at the junction of state route number 82 in the vicinity of Selah northerly by way of Selah and easterly to a junction with state route number 821 in the vicinity of the firing center interchange.

Before award of any construction contract for improvements to state route number 823 under either program A or program C, the department of transportation shall secure a portion of the construction cost from the city of Selah or Yakima county, or both. [1991 c 342 § 46; 1984 c 197 § 3.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.825 State route No. 900. (Effective April 1, 1992.) A state highway to be known as state route number 900 is established as follows:

Beginning at a junction with state route number 5 in Seattle near the Duwamish River, thence southerly by way of Renton to a junction with state route number 90 in the vicinity of Issaquah. [1991 c 342 § 47; 1979 ex.s. c 33 § 16; 1970 ex.s. c 51 § 166.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.830 State route No. 901. (Effective April 1, 1992.) A state highway to be known as state route number 901 is established as follows:

Beginning at a junction with state route number 90 in the vicinity west of Issaquah, thence northerly to the east of Lake Sammamish to a junction with state route number 202 in the vicinity of Redmond. [1991 c 342 § 48; 1971 ex.s. c 73 § 24; 1970 ex.s. c 51 § 167.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.835 State route No. 902. (Effective April 1, 1992.) A state highway to be known as state route number 902 is established as follows:

Beginning at a junction with state route number 90, thence northwesterly, northerly, northeasterly, and easterly, via the town of Medical Lake, to a junction with state route number 90 at a point approximately three miles northeast of Four Lakes. [1991 c 342 § 49; 1970 ex.s. c 51 § 168.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.855 State route No. 908. (Effective April 1, 1992.) A state highway to be known as state route number 908 is established as follows:

Beginning at a junction with state route number 405 in Kirkland, thence easterly to a junction with state route number 202 in the vicinity of Redmond. [1991 c 342 § 50; 1971 ex.s. c 73 § 27.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.919 State route No. 971. (Effective April 1, 1992.) A state highway to be known as state route number 971 is established as follows:

Beginning at a junction with state route number 97—alternate in the vicinity of Winesap, thence northerly to Lake Chelan state park, thence southeasterly to a junction with state route number 97—alternate west of Chelan. [1991 c 342 § 51.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.960 Local bridges—Department responsibility. (Effective April 1, 1992.) Although not part of the state highway system, the bridges designated in this section shall remain the continuing responsibility of the Washington state department of transportation. Continuing responsibility includes all structural maintenance, repair, and replacement of the substructure, superstructure, and roadway deck. Local agencies are responsible for snow and ice control, sweeping, striping, lane marking, and channelization.

Facility	State of Washington Inventory of Bridges and Structures (SWIBS) Number
S. Fork Skykomish River Bridge	WN-002000487032
Manette Bridge	WN-303250032700
Grays River Bridge (Rosburg)	WN-403000064300
Elochoman Bridge	WN-407000023300

[1991 c 342 § 55.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

Chapter 47.24

CITY STREETS AS PART OF STATE HIGHWAYS

Sections

47.24.020 Jurisdiction, control of such streets. (Effective April 1, 1992.)

47.24.020 Jurisdiction, control of such streets. (Effective April 1, 1992.) The jurisdiction, control, and duty of the state and city or town with respect to such streets shall be as follows:

(1) The department has no authority to change or establish any grade of any such street without approval of the governing body of such city or town, except with respect to limited access facilities established by the commission;

(2) The city or town shall exercise full responsibility for and control over any such street beyond the curbs and if no curb is installed, beyond that portion of the highway used for highway purposes. However, within incorporated cities and towns the title to a state limited access highway vests in the state, and, notwithstanding any other provision of this section, the department shall exercise full jurisdiction, responsibility, and control to and over such facility as provided in chapter 47.52 RCW;

(3) The department has authority to prohibit the suspension of signs, banners, or decorations above the portion of such street between the curbs or portion used for highway purposes up to a vertical height of twenty feet above the surface of the roadway;

(4) The city or town shall at its own expense maintain all underground facilities in such streets, and has the right to construct such additional underground facilities as may be necessary in such streets;

(5) The city or town has the right to grant the privilege to open the surface of any such street, but all damage occasioned thereby shall promptly be repaired either by the city or town itself or at its direction;

(6) The city or town at its own expense shall provide street illumination and shall clean all such streets, including storm sewer inlets and catch basins, and remove all snow, except that the state shall when necessary plow the snow on the roadway. In cities and towns having a population of fifteen thousand or less according to the latest determination of population by the office of financial management, the state, when necessary for public safety, shall assume, at its expense, responsibility for the stability of the slopes of cuts and fills and the embankments within the right of way to protect the roadway itself. When the population of a city or town reaches fifteen thousand after January 1, 1990, the state shall retain the responsibility for the stability of slopes of cuts and fills and the embankments within the right of way to protect the road itself until the legislature acts upon the findings of the task force created in section 53, chapter 342, Laws of 1991; or until June 30, 1993, whichever occurs first. The state shall install, maintain, and operate all illuminating facilities on any limited access facility, together with its interchanges, located within the corporate limits of any city or town, and shall assume and pay the costs of all such installation, maintenance, and operation incurred after November 1, 1954;

(7) The department has the right to use all storm sewers on such highways without cost; and if new storm sewer facilities are necessary in construction of new streets by the department, the cost of the facilities shall be borne by the state and/or city as may be mutually

agreed upon between the department and the governing body of the city or town;

(8) Cities and towns have exclusive right to grant franchises not in conflict with state laws, over, beneath, and upon such streets, but the department is authorized to enforce in an action brought in the name of the state any condition of any franchise which a city or town has granted on such street. No franchise for transportation of passengers in motor vehicles may be granted on such streets without the approval of the department, but the department shall not refuse to approve such franchise unless another street conveniently located and of strength of construction to sustain travel of such vehicles is accessible;

(9) Every franchise or permit granted any person by a city or town for use of any portion of such street by a public utility shall require the grantee or permittee to restore, repair, and replace to its original condition any portion of the street damaged or injured by it;

(10) The city or town has the right to issue overload or overwidth permits for vehicles to operate on such streets or roads subject to regulations printed and distributed to the cities and towns by the department;

(11) Cities and towns shall regulate and enforce all traffic and parking restrictions on such streets, but all regulations adopted by a city or town relating to speed, parking, and traffic control devices on such streets not identical to state law relating thereto are subject to the approval of the department before becoming effective. All regulations pertaining to speed, parking, and traffic control devices relating to such streets heretofore adopted by a city or town not identical with state laws shall become null and void unless approved by the department heretofore or within one year after March 21, 1963;

(12) The department shall erect, control, and maintain at state expense all route markers and directional signs, except street signs, on such streets;

(13) The department shall install, operate, maintain, and control at state expense all traffic control signals, signs, and traffic control devices for the purpose of regulating both pedestrian and motor vehicular traffic on, entering upon, or leaving state highways in cities and towns having a population of fifteen thousand or less according to the latest determination of population by the office of financial management. Such cities and towns may submit to the department a plan for traffic control signals, signs, and traffic control devices desired by them, indicating the location, nature of installation, or type thereof, or a proposed amendment to such an existing plan or installation, and the department shall consult with the cities or towns concerning the plan before installing such signals, signs, or devices. Cities and towns having a population in excess of fifteen thousand according to the latest determination of population by the office of financial management shall install, maintain, operate, and control such signals, signs, and devices at their own expense, subject to approval of the department for the installation and type only. When the population of a city or town reaches fifteen thousand after January

1, 1990, the state shall retain the responsibility for installing, operating, maintaining, and controlling such signals, signs, and devices until the legislature acts upon the findings of the task force created in section 53, chapter 342, Laws of 1991, or until June 30, 1993, whichever occurs first. For the purpose of this subsection, striping, lane marking, and channelization are considered traffic control devices;

(14) All revenue from parking meters placed on such streets belongs to the city or town;

(15) Rights of way for such streets shall be acquired by either the city or town or by the state as shall be mutually agreed upon. Costs of acquiring rights of way may be at the sole expense of the state or at the expense of the city or town or at the expense of the state and the city or town as may be mutually agreed upon. Title to all such rights of way so acquired shall vest in the city or town: PROVIDED, That no vacation, sale, rental, or any other nontransportation use of any unused portion of any such street may be made by the city or town without the prior written approval of the department; and all revenue derived from sale, vacation, rental, or any nontransportation use of such rights of way shall be shared by the city or town and the state in the same proportion as the purchase costs were shared;

(16) If any city or town fails to perform any of its obligations as set forth in this section or in any cooperative agreement entered into with the department for the maintenance of a city or town street forming part of the route of a state highway, the department may notify the mayor of the city or town to perform the necessary maintenance within thirty days. If the city or town within the thirty days fails to perform the maintenance or fails to authorize the department to perform the maintenance as provided by RCW 47.24.050, the department may perform the maintenance, the cost of which is to be deducted from any sums in the motor vehicle fund credited or to be credited to the city or town. [1991 c 342 § 52; 1987 c 68 § 1; 1984 c 7 § 150; 1977 ex.s. c 78 § 7; 1967 c 115 § 1; 1963 c 150 § 1; 1961 c 13 § 47.24.020. Prior: 1957 c 83 § 3; 1955 c 179 § 3; 1953 c 193 § 1; 1949 c 220 § 5, part; 1945 c 250 § 1, part; 1943 c 82 § 10, part; 1937 c 187 § 61, part; Rem. Supp. 1949 § 6450-61, part.]

Task force: "(1) A task force is created to examine the population threshold at which cities and towns must assume additional responsibility for their streets that are part of the state highway system.

(2) The task force shall consist of eight members: (a) Four representatives from the department of transportation, with the assistant secretary for local programs acting as chair; (b) one representative from the association of Washington cities; (c) three city representatives selected by the association of Washington cities.

(3) The task force's study shall include [include], but is not limited to:

(a) Identifying the population threshold at which cities and towns must assume responsibility for the stability of slopes of cuts and fills, the embankments within the right of way, and traffic signals and other control devices on their streets that are part of the state highway system. The task force shall also determine whether the transfer of responsibilities will be incremental or total.

(b) Assessing a city's ability, including its staffing and technical capabilities, to assume responsibility for maintaining traffic signals and other control devices on their streets that are part of the state highway system.

(4) The task force must submit its findings and recommendations to the legislative transportation committee by July 1, 1992." [1991 c 342 § 53.]

Effective dates—1991 c 342: See note following RCW 47.26.167.
Severability—1984 c 7: See note following RCW 47.01.141.

Chapter 47.26

DEVELOPMENT IN URBAN AREAS—URBAN ARTERIALS

Sections	
47.26.080	Urban arterial trust account—Withholding of funds for noncompliance.
47.26.121	Transportation improvement board—Membership—Appointments—Terms—Chair—Expenses.
47.26.164	City hardship assistance program—Implementation. (Effective April 1, 1992.)
47.26.167	Jurisdictional transfers.

47.26.080 Urban arterial trust account—Withholding of funds for noncompliance. There is hereby created in the motor vehicle fund the urban arterial trust account. All moneys deposited in the motor vehicle fund to be credited to the urban arterial trust account shall be expended for the construction and improvement of city arterial streets and county arterial roads within urban areas, for expenses of the transportation improvement board, or for the payment of principal or interest on bonds issued for the purpose of constructing or improving city arterial streets and county arterial roads within urban areas, or for reimbursement to the state, counties, cities, and towns in accordance with RCW 47.26.4252 and 47.26.4254, the amount of any payments made on principal or interest on urban arterial trust account bonds from motor vehicle or special fuel tax revenues which were distributable to the state, counties, cities, and towns.

The board shall not allocate funds, nor make payments of the funds under RCW 47.26.260, to any county, city, or town identified by the governor under RCW 36.70A.340. [1991 1st sp.s. c 32 § 32; 1988 c 167 § 13; 1981 c 315 § 2; 1979 c 5 § 1; 1977 ex.s. c 317 § 22; 1967 ex.s. c 83 § 14.]

Section headings not law—1991 1st sp.s. c 32: See RCW 36.70A.902.

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Effective date—1981 c 315: See note following RCW 47.26.060.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

47.26.121 Transportation improvement board—Membership—Appointments—Terms—Chair—Expenses.

(1) There is hereby created a transportation improvement board of seventeen members, six of whom shall be county members and six of whom shall be city members. The remaining members shall be: (a) The assistant secretary of the department of transportation whose primary responsibilities relate to planning and public transportation; (b) the assistant secretary for highways of the department of transportation; (c) the

assistant secretary for local programs of the department of transportation; (d) a representative of a public transit system; and (e) a private sector representative.

(2) Of the county members of the board, one member shall be a county engineer from a county with a population of one hundred twenty-five thousand or more; one member shall be a county engineer from a county with a population of less than one hundred twenty-five thousand; one member shall be the executive director of the county road administration board, created by RCW 36.78.060; two members shall be county executives, council members, or commissioners from counties with a population of one hundred twenty-five thousand or more; one member shall be a county executive, council member, or commissioner from a county with a population of less than one hundred twenty-five thousand. All county members of the board, except the executive director of the county road administration board, shall be appointed. Not more than one county member of the board shall be from any one county. For the purposes of this subsection, the term "county engineer" means the director of public works in any county in which such a position exists.

(3) Of the city members of the board two shall be chief city engineers, public works directors, or other city employees with responsibility for public works activities, of cities over twenty thousand population; one shall be a chief city engineer, public works director, or other city employee with responsibility for public works activities, of a city of less than twenty thousand population; two shall be mayors, commissioners, or city council members of cities of more than twenty thousand population; and one shall be a mayor, commissioner, or council member of a city of less than twenty thousand population. All of the city members shall be appointed. Not more than one city member of the board shall be from any one city.

(4) The transit member shall be a general manager, executive director, or transit director of a city-owned transit system, county transportation authority, metropolitan municipal corporation, or public transportation benefit area.

(5) The private sector member shall be a citizen with business, management, and transportation related experience and shall be active in a business community-based transportation organization.

(6) Appointments of county, city, transit, and private sector representatives shall be made by the secretary of the department of transportation, with appointments to be made by July 1, 1991. Appointees shall be chosen from a list of two persons for each position nominated by the Washington state association of counties for county members, the association of Washington cities for city members, and the Washington state transit association for the transit member. In the case of a vacancy, the appointment shall be only for the remainder of the unexpired term in which the vacancy has occurred. A vacancy shall be deemed to have occurred on the board when any member elected to public office completes that term of office or is removed therefrom for any reason or when any member employed by a political subdivision terminates such employment for whatsoever reason.

(7) Appointments shall be for terms of four years. Terms of all appointed members shall expire on June 30th of even-numbered years.

(8) The board shall elect a chair from among its members for a two-year term.

(9) Expenses of the board, including administration of the transportation improvement program, shall be paid from the urban arterial account. [1991 c 363 § 124; 1991 c 308 § 1; 1990 c 266 § 4; 1988 c 167 § 1.]

Reviser's note: This section was amended by 1991 c 308 § 1 and by 1991 c 363 § 124, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

Effective date—1991 c 308: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 308 § 2.]

References to urban arterial board—1988 c 167: "References in the Revised Code of Washington to the urban arterial board shall be construed to mean the transportation improvement board." [1988 c 167 § 35.]

Savings—1988 c 167: "All rules and all pending business before the urban arterial board shall be continued and acted upon by the transportation improvement board. All existing contracts and obligations of the urban arterial board shall remain in full force and shall be performed by the transportation improvement board." [1988 c 167 § 36.]

Severability—1988 c 167: "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." [1988 c 167 § 37.]

47.26.164 City hardship assistance program—Implementation. (Effective April 1, 1992.) The board shall adopt reasonable rules necessary to implement the city hardship assistance program as recommended by the road jurisdiction study.

The following criteria shall be used to implement the program:

(1) Only those cities with a net gain in cost responsibility due to jurisdictional transfers in chapter 342, Laws of 1991, as determined by the board, may participate;

(2) Cities with populations of fifteen thousand or less, as determined by the office of financial management, may participate;

(3) The board shall develop criteria and procedures under which eligible cities may request funding for rehabilitation projects on city streets acquired under chapter 342, Laws of 1991; and

(4) The board shall also be authorized to allocate funds from the hardship account to cities with a population under twenty thousand to offset extraordinary costs associated with the transfer of roadways other than pursuant to chapter 342, Laws of 1991, that occur after January 1, 1991. [1991 c 342 § 60.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.26.167 Jurisdictional transfers. The legislature recognizes the need for a multijurisdictional body to review future requests for jurisdictional transfers. The board is hereby directed, beginning September 1, 1991,

to receive petitions from cities, counties, or the state requesting any addition or deletion from the state highway system. The board is required to utilize the criteria established in RCW 47.17.001 in evaluating petitions and to adopt rules for implementation of this process. The board shall forward to the legislative transportation committee by November 15 each year any recommended jurisdictional transfers. [1991 c 342 § 62.]

Effective dates—1991 c 342: "(1) Sections 62 and 63 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 1, 1991.

(2) The remainder of this act shall take effect April 1, 1992." [1991 c 342 § 68.]

Chapter 47.28

CONSTRUCTION AND MAINTENANCE OF HIGHWAYS

Sections

47.28.140	Agreements to benefit or improve highways, roads, or streets, establish urban public transportation system, prevent or minimize flood damages—Labor or contract—Costs.
47.28.170	Emergency protection and restoration of highways.
47.28.220	Compost products in transportation projects.

47.28.140 Agreements to benefit or improve highways, roads, or streets, establish urban public transportation system, prevent or minimize flood damages—Labor or contract—Costs. When in the opinion of the governing authorities representing the department and any agency, instrumentality, municipal corporation, or political subdivision of the state of Washington, any highway, road, or street will be benefited or improved by constructing, reconstructing, locating, relocating, laying out, repairing, surveying, altering, improving, or maintaining, or by the establishment adjacent to, under, upon, within, or above any portion of any such highway, road, or street of an urban public transportation system, by either the department or any agency, instrumentality, municipal corporation, or political subdivision of the state, and it is in the public interest to do so, the authorities may enter into cooperative agreements wherein either agrees to perform the work and furnish the materials necessary and pay the cost thereof, including necessary engineering assistance, which costs and expenses shall be reimbursed by the party whose responsibility it was to do or perform the work or improvement in the first instance. The work may be done by either day labor or contract, and the cooperative agreement between the parties shall provide for the method of reimbursement. In the case of some special benefit or improvement to a state highway derived from any project that assists in preventing or minimizing flood damages as defined in RCW 86.16.120 or from the construction of any public works project, including any urban public transportation system, the department may contribute to the cost thereof by making direct payment to the particular state department, agency, instrumentality, municipal corporation, or political subdivision on the basis of benefits received, but such payment shall be made only after a

cooperative agreement has been entered into for a specified amount or on an actual cost basis prior to the commencement of the particular public works project. [1991 c 322 § 29; 1984 c 7 § 174; 1967 c 108 § 6; 1961 c 13 § 47.28.140. Prior: 1955 c 384 § 8.]

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

Severability—1984 c 7: See note following RCW 47.01.141.
Urban public transportation system defined: RCW 47.04.082.

47.28.170 Emergency protection and restoration of highways. (1) Whenever the department finds that as a consequence of accident, natural disaster, or other emergency, an existing state highway is in jeopardy or is rendered impassible in one or both directions and the department further finds that prompt reconstruction, repair, or other work is needed to preserve or restore the highway for public travel, the department may obtain at least three written bids for the work without publishing a call for bids, and the secretary of transportation may award a contract forthwith to the lowest responsible bidder.

The department shall notify any association or organization of contractors filing a request to regularly receive notification. Notification to an association or organization of contractors shall include: (a) The location of the work to be done; (b) the general anticipated nature of the work to be done; and (c) the date determined by the department as reasonable in view of the nature of the work and emergent nature of the problem after which the department will not receive bids.

(2) Whenever the department finds it necessary to protect a highway facility from imminent damage or to perform emergency work to reopen a highway facility, the department may contract for such work on a negotiated basis not to exceed force account rates for a period not to exceed thirty working days.

(3) The secretary shall review any contract exceeding two hundred thousand dollars awarded under subsection (1) or (2) of this section with the transportation commission at its next regularly scheduled meeting.

(4) Any person, firm, or corporation awarded a contract for work must be prequalified pursuant to RCW 47.28.070 and may be required to furnish a bid deposit or performance bond. [1990 c 265 § 1; 1984 c 7 § 175; 1971 ex.s. c 89 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.28.220 Compost products in transportation projects. (1) A contract awarded in whole or in part for the purchase of compost products as a soil cover or soil amendment to state highway rights of way shall specify that compost products be purchased in accordance with the following schedule:

(a) For the period July 1, 1991, through June 30, 1993, twenty-five percent of the total dollar amount purchased;

(b) For the period July 1, 1993, through June 30, 1995, fifty percent of the total dollar amount purchased.

The percentages in this subsection apply only to the materials' value, and do not include services or other materials.

(2) In order to carry out the provisions of this section, the department of transportation shall develop and adopt bid specifications for compost products used in state highway construction projects. [1991 c 297 § 14.]

Captions not law—1991 c 297: See RCW 43.19A.900.

Chapter 47.36

TRAFFIC CONTROL DEVICES

Sections	
47.36.005	Definitions.
47.36.280	Pavement marking standards.
47.36.290	State park directional signs.
47.36.300	Supplemental directional signs—Erection by local governments.
47.36.310	Specific information panels—Interstate right of way—"Gas," "Food," or "Lodging"—Directional information—Individual business signs.
47.36.320	Specific information panels, tourist-oriented directional signs—Primary and scenic systems right of way—"Gas," "Food," "Recreation," "Lodging"—Directional information—Individual business signs.
47.36.330	Specific information panels—Maximum signs and distances.
47.36.340	Specific information panels—Lodging activity listings.
47.36.350	Specific information panels—Installation time.
47.36.400	Adopt-a-highway signs.

47.36.005 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(2) "Interstate system" means a state highway that is or becomes part of the national system of interstate and defense highways as described in section 103(d) of title 23, United States Code.

(3) "Maintain" means to allow to exist.

(4) "Primary system" means a state highway that is or becomes part of the federal-aid primary system as described in section 103(b) of title 23, United States Code.

(5) "Scenic system" means (a) a state highway within a public park, federal forest area, public beach, public recreation area, or national monument, (b) a state highway or portion of a highway outside the boundaries of an incorporated city or town designated by the legislature as a part of the scenic system, or (c) a state highway or portion of a highway outside the boundaries of an incorporated city or town designated by the legislature as a part of the scenic and recreational highway system except for the sections of highways specifically excluded in RCW 47.42.025.

(6) "Specific information panel" means a panel, rectangular in shape, located in the same manner as other official traffic signs readable from the main traveled ways, and consisting of:

(a) The words "GAS," "FOOD," or "LODGING" and directional information; and

(b) One or more individual business signs mounted on the panel.

(7) "Business sign" means a separately attached sign mounted on the specific information panel or roadside area information panel to show the brand or trademark and name, or both, of the motorist service available on the crossroad at or near the interchange. Nationally, regionally, or locally known commercial symbols or trademarks for service stations, restaurants, and motels shall be used when applicable. The brand or trademark identification symbol used on the business sign shall be reproduced with the colors and general shape consistent with customary use. Messages, trademarks, or brand symbols that interfere with, imitate, or resemble an official warning or regulatory traffic sign, signal, or device are prohibited.

(8) "Roadside area information panel or display" means a panel or display located so as not to be readable from the main traveled way, erected in a safety rest area, scenic overlook, or similar roadside area, for providing motorists with information in the specific interest of the traveling public.

(9) "Tourist-oriented directional sign" means a sign on a specific information panel on the state highway system to provide directional information to a qualified tourist-oriented business, service, or activity.

(10) "Qualified tourist-oriented business" means a lawful cultural, historical, recreational, educational, or entertaining activity or a unique or unusual commercial or nonprofit activity, the major portion of whose income or visitors are derived during its normal business season from motorists not residing in the immediate area of the activity.

(11) "Adopt-a-highway sign" means a sign on a state highway right of way referring to the departments' adopt-a-highway litter control program. [1991 c 94 § 3.]

47.36.280 Pavement marking standards. The department of transportation shall, by January 1, 1992, adopt minimum pavement marking standards for the area designating the limits of the vehicle driving lane along the right edge for arterials that do not have curbs or sidewalks and are inside urbanized areas. In preparing the standards, the department of transportation shall take into consideration all types of pavement markings, including flat, raised, and recessed markings, and their effect on pedestrians, bicycle, and motor vehicle safety.

The standards shall provide that a jurisdiction shall conform to these requirements, at such time thereafter that it undertakes to (1) renew or install permanent markings on the existing or new roadway, and (2) remove existing nonconforming raised pavement markers at the time the jurisdiction prepares to resurface the roadway, or earlier, at its option. These standards shall be in effect, as provided in this section, unless the legislative authority of the local governmental body finds that special circumstances exist affecting vehicle and pedestrian safety that warrant a variance to the standard.

For the purposes of this section, "urbanized area" means an area designated as such by the United States bureau of census and having a population of more than fifty thousand. Other jurisdictions that install pavement marking material on the right edge of the roadway shall do so in a manner not in conflict with the minimum state standard. [1991 c 214 § 4.]

47.36.290 State park directional signs. Directional signs for state parks within fifteen miles of an interstate highway shall be erected and maintained on the interstate highway by the department despite the existence of additional directional signs on primary or scenic system highways in closer proximity to such state parks. [1985 c 376 § 7. Formerly RCW 47.42.160.]

Legislative intent—1985 c 376: See note following RCW 47.42.020.

47.36.300 Supplemental directional signs—Erection by local governments. (1) The legislative authority of any county, city, or town may erect, or permit the erection of, supplemental directional signs directing motorists to motorist service businesses qualified for specific information panels pursuant to RCW 47.36.320 in any location on, or adjacent to, the right of way of any roads or streets within their jurisdiction.

(2) Appropriate fees may be charged to cover the cost of issuing permits, installation, or maintenance of such signs.

(3) Supplemental signs and their locations shall comply with all applicable provisions of this chapter, sections 131 and 315 of Title 23 United States Code, and such rules as may be adopted by the department including the manual on uniform traffic control devices for streets and highways. [1986 c 114 § 3. Formerly RCW 47.42.052.]

47.36.310 Specific information panels—Interstate right of way—"Gas," "Food," or "Lodging"—Directional information—Individual business signs. The department is authorized to erect and maintain specific information panels within the right of way of the interstate highway system to give the traveling public specific information as to gas, food, or lodging available on a crossroad at or near an interchange. Specific information panels shall include the words "GAS," "FOOD," or "LODGING" and directional information and may contain one or more individual business signs maintained on the panel. Specific information panels are authorized within the corporate limits of cities and towns and areas zoned for commercial or industrial uses at locations where there is adequate distance between interchanges to ensure compliance with the provisions of Title 23 C.F.R. sec. 655.307(a). The erection and maintenance of specific information panels shall conform to the national standards promulgated by the United States secretary of transportation pursuant to sections 131 and 315 of Title 23, United States Code and rules adopted by the state department of transportation. A motorist service business located within one mile of a state highway shall not be permitted to display its name, brand, or trademark on a specific information panel unless its owner has first

entered into an agreement with the department limiting the height of its on-premise signs at the site of its service installation to not more than fifteen feet higher than the roof of its main building. The department shall charge reasonable fees for the display of individual business signs to defray the costs of their installation and maintenance. The restriction for on-premise signs shall not apply if the sign is not visible from the highway. The department may, on a case-by-case basis, waive the height restriction when an on-premise sign is visible from the rural interstate system. [1987 c 469 § 3; 1986 c 114 § 1; 1985 c 142 § 1; 1984 c 7 § 223; 1974 ex.s. c 80 § 2. Formerly RCW 47.42.046.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.320 Specific information panels, tourist-oriented directional signs—Primary and scenic systems right of way—"Gas," "Food," "Recreation," "Lodging"—Directional information—Individual business signs. The department is authorized to erect and maintain specific information panels within the right of way of both the primary system and the scenic system to give the traveling public specific information as to gas, food, recreation, or lodging available off the primary or scenic highway accessible by way of highways intersecting the primary or scenic highway. Such specific information panels and tourist-oriented directional signs shall be permitted only at locations within the corporate limits of cities and towns and areas zoned for commercial or industrial uses where there is adequate distance between interchanges to ensure compliance with the provisions of Title 23 C.F.R. secs. 655.308(a) and 655.309(a). Specific information panels shall include the words "GAS," "FOOD," "RECREATION," or "LODGING" and directional information and may contain one or more individual business signs maintained on the panel. The erection and maintenance of specific information panels along primary or scenic highways shall conform to the national standards promulgated by the United States secretary of transportation pursuant to sections 131 and 315 of Title 23 United States Code and rules adopted by the state department of transportation including the manual on uniform traffic control devices for streets and highways. A motorist service business located within one mile of a state highway shall not be permitted to display its name, brand, or trademark on a specific information panel unless its owner has first entered into an agreement with the department limiting the height of its on-premise signs at the site of its service installation to not more than fifteen feet higher than the roof of its main building.

The department shall adopt rules for the erection and maintenance of tourist-oriented directional signs with the following restrictions:

(1) Where installed, they shall be placed in advance of the "GAS," "FOOD," "RECREATION," or "LODGING" specific information panels previously described in this section;

(2) Signs shall not be placed to direct a motorist to an activity visible from the main traveled roadway;

(3) Premises on which the qualified tourist-oriented business is located must be within fifteen miles of the state highway, and necessary supplemental signing on local roads must be provided before the installation of the signs on the state highway.

The department shall charge reasonable fees for the display of individual business signs to defray the costs of their installation and maintenance. [1986 c 114 § 2; 1985 c 376 § 4; 1985 c 142 § 2; 1984 c 7 § 224; 1974 ex.s. c 80 § 4. Formerly RCW 47.42.047.]

Legislative intent—1985 c 376: See note following RCW 47.42.020.

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.330 Specific information panels—Maximum signs and distances. (1) Not more than six business signs may be permitted on specific information panels authorized by RCW 47.36.310 and 47.36.320.

(2) The maximum distance that eligible service facilities may be located on either side of an interchange or intersection to qualify for a business sign are as follows:

(a) On fully-controlled, limited access highways, gas, food, or lodging activities shall be located within three miles. Camping activities shall be within five miles.

(b) On highways with partial access control or no access control, gas, food, lodging, or camping activities shall be located within five miles.

(3) If no eligible services are located within the distance limits prescribed in subsection (2) of this section, the distance limits shall be increased until an eligible service of a type being considered is reached, up to a maximum of fifteen miles. [1985 c 142 § 3. Formerly RCW 47.42.0475.]

47.36.340 Specific information panels—Lodging activity listings. To be eligible for placement of a business sign on a specific information panel a lodging activity shall:

(1) Be licensed or approved by the department of social and health services or county health authority;

(2) Provide adequate sleeping and bathroom accommodations available for rental on a daily basis; and

(3) Provide public telephone facilities. [1985 c 376 § 8. Formerly RCW 47.42.170.]

Legislative intent—1985 c 376: See note following RCW 47.42.020.

47.36.350 Specific information panels—Installation time. The department shall ensure that specific information panels are installed within nine months of receiving the request for installation. [1991 c 94 § 5.]

47.36.400 Adopt-a-highway signs. The department may install adopt-a-highway signs, with the following restrictions:

(1) Signs shall be designed by the department and may only include the words "adopt-a-highway litter control next XX miles" and the name of the litter control area sponsor. The sponsor's name shall not be displayed more predominantly than the remainder of the

sign message. No trademarks or business logos may be displayed;

(2) Signs may be placed along interstate, primary, and scenic system highways;

(3) For each litter control area designated by the department, one sign may be placed visible to traffic approaching from each direction;

(4) Signs shall be located so as not to detract from official traffic control signs installed pursuant to the manual on uniform traffic control devices adopted by the department;

(5) Signs shall be located so as not to restrict sight distance on approaches to intersections or interchanges;

(6) The department may charge reasonable fees to defray the cost of manufacture, installation, and maintenance of adopt-a-highway signs. [1991 c 94 § 4.]

Chapter 47.39

SCENIC AND RECREATIONAL HIGHWAY ACT OF 1967

Sections

47.39.020	Designation of portions of existing highways as part of system. (Effective until April 1, 1992.)
47.39.020	Designation of portions of existing highways as part of system. (Effective April 1, 1992.)
47.39.070	Method of assessing scenic and recreational highways—Future additions to system.

47.39.020 Designation of portions of existing highways as part of system. (Effective until April 1, 1992.)

The following portions of highways are designated as part of the scenic and recreational highway system:

(1) State route number 2, beginning at the crossing of Woods creek at the east city limits of Monroe, thence in an easterly direction by way of Stevens pass to a junction with state route number 97 in the vicinity of Peshastin;

(2) State route number 3, beginning at a junction with state route number 106 in the vicinity of Belfair, thence in a northeasterly direction to a junction with Arsenal Way south of Bremerton; also

Beginning at a junction of Erlands Point Road north of Bremerton thence northeasterly to a junction with state route number 104 in the vicinity of Port Gamble;

(3) State route number 8, beginning at a junction with state route number 12 in the vicinity of Elma, thence easterly to a junction with state route number 101 near Tumwater;

(4) State route number 10, beginning at Teanaway junction, thence easterly to a junction with state route number 97 west of Ellensburg;

(5) State route number 12, beginning at a junction with a county road approximately 2.8 miles west of the crossing of the Wynooche river which is approximately 1.2 miles west of Montesano, thence in an easterly direction to a junction with state route number 8 in the vicinity of Elma; also

Beginning at the Burlington Northern Railroad bridge approximately 3.4 miles west of Dixie, thence in a northerly and easterly direction by way of Dayton,

Dodge, and Pomeroy to a junction with a county road approximately 2.4 miles west of a junction with state route number 129 at Clarkston;

(6) State route number 14, beginning at the crossing of Gibbons creek approximately 0.9 miles east of Washougal, thence in an easterly direction by way of Stevenson to a westerly junction with state route number 97 in the vicinity of Maryhill; also

Beginning at the easterly junction with state route number 97 in the vicinity of Maryhill, thence easterly along the north bank of the Columbia river to a point in the vicinity of Plymouth;

(7) State route number 17, beginning at a junction with state route number 395 in the vicinity of Eltopia, thence in a northwesterly direction to the south end of the overcrossing of state route number 90, in the vicinity of Moses Lake; also

Beginning at a junction with Grape Drive in the vicinity of Moses Lake, thence northwesterly and northerly by way of Soap Lake to a junction with state route number 2 west of Coulee City;

(8) State route number 20, beginning at the Keystone ferry slip on Whidbey Island, thence easterly and northerly to a junction with Rhododendron road in the vicinity east of Coupeville; also

Beginning at a junction with Sherman road in the vicinity west of Coupeville, generally northerly to a junction with Miller road in the vicinity southwest of Oak Harbor; also

Beginning at a junction with Torpedo road in the vicinity northeast of Oak Harbor, thence northerly by way of Deception Pass to a junction with state route number 20 north in the vicinity southeast of Anacortes; also

Beginning at the crossing of Hanson creek approximately 6.0 miles west of Lyman, thence easterly by way of Concrete, Marblemount, Diablo Dam, and Twisp to a junction with state route number 153 southeast of Twisp; also

Beginning at a junction with state route number 21 approximately three miles east of Republic, thence in an easterly direction to a junction with state route number 395 at the west end of the crossing over the Columbia river at Kettle Falls; also

Beginning at a junction with a county road 2.76 miles east of the junction with state route number 395 in Colville, thence in a northeasterly direction to a junction with state route number 31 at Tiger; thence in a southerly direction to a junction with state route number 2 at Newport;

(9) State route number 21, beginning at the Keller ferry slip on the north side of Roosevelt lake, thence in a northerly direction to the crossing of Granite creek approximately fifty-four miles north of the Keller ferry;

(10) State route number 90, beginning at the CMSTPP railroad overcrossing approximately 2.3 miles southeast of North Bend, thence in an easterly direction by way of Snoqualmie pass to the crossing of the Cle Elum river approximately 2.6 miles west of Cle Elum;

(11) State route number 97, beginning at the crossing of the Columbia river at Biggs Rapids, thence in a

northerly direction to the westerly junction with state route number 14 in the vicinity of Maryhill;

(12) State route number 101, beginning at a junction with state route number 109 in the vicinity of Queets, thence in a northerly, northeasterly, and easterly direction by way of Forks to the west boundary of the Olympic national park in the vicinity of Lake Crescent; also

Beginning at Sequim Bay state park, thence in a southeasterly and southerly direction to a junction with the Airport road north of Shelton; also

Beginning at a junction with state route number 3 south of Shelton, thence in a southerly and southeasterly direction to the west end of the Black Lake road overcrossing in the vicinity northeast of Tumwater;

(13) State route number 104, beginning at a junction with state route number 101 in the vicinity south of Discovery bay, thence in a southeasterly direction to the vicinity of Shine on Hood Canal; also

Beginning at a junction with state route number 3 east of the Hood Canal crossing, thence northeasterly to Port Gamble;

(14) State route number 105, beginning at a junction with state route number 101 at Raymond, thence westerly and northerly by way of Tokeland and North Cove to the shore of Grays Harbor north of Westport; also

Beginning at a junction with state route number 105 in the vicinity south of Westport, thence northeasterly to a junction with state route number 101 at Aberdeen;

(15) State route number 106, beginning at a junction with state route number 101 in the vicinity of Union, thence northeasterly to a junction with state route number 3 in the vicinity of Belfair;

(16) State route number 109, beginning at a junction with a county road approximately 3.0 miles northwest of the junction with state route number 101 in Hoquiam, thence in a northwesterly direction by way of Ocean City, Copalis, Pacific Beach, and Moclips to a junction with state route number 101 in the vicinity of Queets;

(17) State route number 112, beginning at the easterly boundary of the Makah Indian reservation, thence in an easterly direction to the vicinity of Laird's corner on state route number 101;

(18) State route number 126, beginning at a junction with state route number 12 in the vicinity of Dayton, thence in a northeasterly direction to a junction with state route number 12 in the vicinity west of Pomeroy;

(19) State route number 153, beginning at a junction with state route number 97 in the vicinity of Pateros, thence in a northerly direction to a junction with state route number 20 in the vicinity south of Twisp;

(20) State route number 155, beginning at a junction with state route number 2 in the vicinity north of Coulee City, thence in a northeasterly direction to the boundary of the federal reservation at the Grand Coulee dam; also

Beginning at a junction with a county road 2.07 miles north of the junction with 12th street in Elmer City, thence in a northwesterly direction to the west end of the crossing of Omak creek east of Omak;

(21) State route number 206, Mt. Spokane Park Drive, beginning at a junction with state route number 2 near the north line of section 3, township 26 N, range 43

E, thence northeasterly to a point in section 28, township 28 N, range 45 E at the entrance to Mt. Spokane state park;

(22) State route number 395, beginning at a point approximately 2.6 miles north of Pasco thence in a northerly direction to a junction with state route number 17 in the vicinity of Eltopia; also

Beginning at the north end of the crossing of Mill creek in the vicinity of Colville, thence in a northwesterly direction to a junction with state route number 20 at the west end of the crossing over the Columbia river at Kettle Falls;

(23) State route number 401, beginning at a junction with state route number 101 at Point Ellice, thence easterly and northerly to a junction with state route number 4 in the vicinity north of Naselle;

(24) State route number 504, beginning at a junction with state route number 5 in the vicinity north of Castle Rock, thence in an easterly direction by way of St. Helens and Spirit lake to Mt. St. Helens;

(25) State route number 525, beginning at a junction with Maxwellton road in the southern portion of Whidbey Island, thence northwesterly to a junction with state route number 20 east of the Keystone ferry slip;

(26) State route number 542, beginning at the Nugent crossing over the Nooksack river approximately 7.7 miles northeast of Bellingham, thence easterly to the vicinity of Austin pass in Whatcom county;

(27) State route number 821, beginning at a junction with state route number 82 at the Yakima firing center interchange, thence in a northerly direction to a junction with state route number 82 at the Thrall road interchange;

(28) State route number 901, beginning at a junction with state route number 90 in the vicinity west of Issaquah, thence northerly to the west of Lake Sammamish to a junction with state route number 908 in the vicinity of Redmond. If the description of state route number 901 is changed after June 7, 1990, the revised route shall retain its status as part of the scenic and recreational highway system. [1990 c 240 § 3; 1975 c 63 § 8; 1973 1st ex.s. c 151 § 10; 1971 ex.s. c 73 § 29; 1970 ex.s. c 51 § 177; 1969 ex.s. c 281 § 6; 1967 ex.s. c 85 § 2.]

Legislative finding—1990 c 240: See note following RCW 47.39.070.

47.39.020 Designation of portions of existing highways as part of system. (Effective April 1, 1992.) The following portions of highways are designated as part of the scenic and recreational highway system:

(1) State route number 2, beginning at the crossing of Woods creek at the east city limits of Monroe, thence in an easterly direction by way of Stevens pass to a junction with state route number 97 in the vicinity of Peshastin;

(2) State route number 3, beginning at a junction with state route number 106 in the vicinity of Belfair, thence in a northeasterly direction to a junction with Arsenal Way south of Bremerton; also

Beginning at a junction of Erlands Point Road north of Bremerton thence northeasterly to a junction with state route number 104 in the vicinity of Port Gamble;

(3) State route number 8, beginning at a junction with state route number 12 in the vicinity of Elma, thence easterly to a junction with state route number 101 near Tumwater;

(4) State route number 10, beginning at Teanaway junction, thence easterly to a junction with state route number 97 west of Ellensburg;

(5) State route number 12, beginning at a junction with a county road approximately 2.8 miles west of the crossing of the Wynooche river which is approximately 1.2 miles west of Montesano, thence in an easterly direction to a junction with state route number 8 in the vicinity of Elma; also

Beginning at the Burlington Northern Railroad bridge approximately 3.4 miles west of Dixie, thence in a northerly and easterly direction by way of Dayton, Dodge, and Pomeroy to a junction with a county road approximately 2.4 miles west of a junction with state route number 129 at Clarkston;

(6) State route number 14, beginning at the crossing of Gibbons creek approximately 0.9 miles east of Washougal, thence in an easterly direction by way of Stevenson to a westerly junction with state route number 97 in the vicinity of Maryhill; also

Beginning at the easterly junction with state route number 97 in the vicinity of Maryhill, thence easterly along the north bank of the Columbia river to a point in the vicinity of Plymouth;

(7) State route number 17, beginning at a junction with state route number 395 in the vicinity of Eltopia, thence in a northwesterly direction to the south end of the overcrossing of state route number 90, in the vicinity of Moses Lake; also

Beginning at a junction with Grape Drive in the vicinity of Moses Lake, thence northwesterly and northerly by way of Soap Lake to a junction with state route number 2 west of Coulee City;

(8) State route number 20, beginning at the Keystone ferry slip on Whidbey Island, thence easterly and northerly to a junction with Rhododendron road in the vicinity east of Coupeville; also

Beginning at a junction with Sherman road in the vicinity west of Coupeville, generally northerly to a junction with Miller road in the vicinity southwest of Oak Harbor; also

Beginning at a junction with Torpedo road in the vicinity northeast of Oak Harbor, thence northerly by way of Deception Pass to a junction with state route number 20 north in the vicinity southeast of Anacortes; also

Beginning at the crossing of Hanson creek approximately 6.0 miles west of Lyman, thence easterly by way of Concrete, Marblemount, Diablo Dam, and Twisp to a junction with state route number 153 southeast of Twisp; also

Beginning at a junction with state route number 21 approximately three miles east of Republic, thence in an easterly direction to a junction with state route number

395 at the west end of the crossing over the Columbia river at Kettle Falls; also

Beginning at a junction with a county road 2.76 miles east of the junction with state route number 395 in Colville, thence in a northeasterly direction to a junction with state route number 31 at Tiger; thence in a southerly direction to a junction with state route number 2 at Newport;

(9) State route number 21, beginning at the Keller ferry slip on the north side of Roosevelt lake, thence in a northerly direction to the crossing of Granite creek approximately fifty-four miles north of the Keller ferry;

(10) State route number 90, beginning at the CMSTPP railroad overcrossing approximately 2.3 miles southeast of North Bend, thence in an easterly direction by way of Snoqualmie pass to the crossing of the Cle Elum river approximately 2.6 miles west of Cle Elum;

(11) State route number 97, beginning at the crossing of the Columbia river at Biggs Rapids, thence in a northerly direction to the westerly junction with state route number 14 in the vicinity of Maryhill;

(12) State route number 101, beginning at a junction with state route number 109 in the vicinity of Queets, thence in a northerly, northeasterly, and easterly direction by way of Forks to the west boundary of the Olympic national park in the vicinity of Lake Crescent; also

Beginning at Sequim Bay state park, thence in a southeasterly and southerly direction to a junction with the Airport road north of Shelton; also

Beginning at a junction with state route number 3 south of Shelton, thence in a southerly and southeasterly direction to the west end of the Black Lake road overcrossing in the vicinity northeast of Tumwater;

(13) State route number 104, beginning at a junction with state route number 101 in the vicinity south of Discovery bay, thence in a southeasterly direction to the vicinity of Shine on Hood Canal; also

Beginning at a junction with state route number 3 east of the Hood Canal crossing, thence northeasterly to Port Gamble;

(14) State route number 105, beginning at a junction with state route number 101 at Raymond, thence westerly and northerly by way of Tokeland and North Cove to the shore of Grays Harbor north of Westport; also

Beginning at a junction with state route number 105 in the vicinity south of Westport, thence northeasterly to a junction with state route number 101 at Aberdeen;

(15) State route number 106, beginning at a junction with state route number 101 in the vicinity of Union, thence northeasterly to a junction with state route number 3 in the vicinity of Belfair;

(16) State route number 109, beginning at a junction with a county road approximately 3.0 miles northwest of the junction with state route number 101 in Hoquiam, thence in a northwesterly direction by way of Ocean City, Copalis, Pacific Beach, and Moclips to a junction with state route number 101 in the vicinity of Queets;

(17) State route number 112, beginning at the easterly boundary of the Makah Indian reservation, thence in an easterly direction to the vicinity of Laird's corner on state route number 101;

(18) State route number 153, beginning at a junction with state route number 97 in the vicinity of Pateros, thence in a northerly direction to a junction with state route number 20 in the vicinity south of Twisp;

(19) State route number 155, beginning at a junction with state route number 2 in the vicinity north of Coulee City, thence in a northeasterly direction to the boundary of the federal reservation at the Grand Coulee dam; also

Beginning at a junction with a county road 2.07 miles north of the junction with 12th street in Elmer City, thence in a northwesterly direction to the west end of the crossing of Omak creek east of Omak;

(20) State route number 206, Mt. Spokane Park Drive, beginning at a junction with state route number 2 near the north line of section 3, township 26 N, range 43 E, thence northeasterly to a point in section 28, township 28 N, range 45 E at the entrance to Mt. Spokane state park;

(21) State route number 395, beginning at a point approximately 2.6 miles north of Pasco thence in a northerly direction to a junction with state route number 17 in the vicinity of Eltopia; also

Beginning at the north end of the crossing of Mill creek in the vicinity of Colville, thence in a northwesterly direction to a junction with state route number 20 at the west end of the crossing over the Columbia river at Kettle Falls;

(22) State route number 401, beginning at a junction with state route number 101 at Point Ellice, thence easterly and northerly to a junction with state route number 4 in the vicinity north of Naselle;

(23) State route number 504, beginning at a junction with state route number 5 in the vicinity north of Castle Rock, thence in an easterly direction by way of St. Helens and Spirit lake to Mt. St. Helens;

(24) State route number 525, beginning at a junction with Maxwellton road in the southern portion of Whidbey Island, thence northwesterly to a junction with state route number 20 east of the Keystone ferry slip;

(25) State route number 542, beginning at the Nugent crossing over the Nooksack river approximately 7.7 miles northeast of Bellingham, thence easterly to the vicinity of Austin pass in Whatcom county;

(26) State route number 821, beginning at a junction with state route number 82 at the Yakima firing center interchange, thence in a northerly direction to a junction with state route number 82 at the Thrall road interchange;

(27) State route number 901, beginning at a junction with state route number 90 in the vicinity west of Issaquah, thence northerly to the east of Lake Sammamish to a junction with state route number 202 in the vicinity of Redmond. [1991 c 342 § 54; 1990 c 240 § 3; 1975 c 63 § 8; 1973 1st ex.s. c 151 § 10; 1971 ex.s. c 73 § 29; 1970 ex.s. c 51 § 177; 1969 ex.s. c 281 § 6; 1967 ex.s. c 85 § 2.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

Legislative finding—1990 c 240: See note following RCW 47.39.070.

47.39.070 Method of assessing scenic and recreational highways—Future additions to system: (1) In addition to planning and design standards required under RCW 47.39.040 and 47.39.050, the department of transportation, in consultation with the parks and recreation commission, shall develop, by December 1, 1990, a method for assessing scenic and recreational highways and an appropriate threshold for the addition of highways to the scenic and recreational system. The method shall take into consideration the following factors:

- (a) Scenic quality of the corridor;
- (b) Service to major population centers;
- (c) Economic feasibility;
- (d) Variety of recreational experience;
- (e) Compatibility with other highway users;
- (f) Harmony with other land uses;
- (g) Access from existing or planned highways and to parks and other recreational areas;
- (h) Popular demand; and
- (i) Degree of urgency for protecting the corridor.

(2) All additions to the scenic and recreational highway system made after June 7, 1990, shall be assessed by the department in accordance with the method adopted under subsection (1) of this section. The department shall submit its recommendations for additions to the legislature for its approval. [1990 c 240 § 2.]

Legislative finding—1990 c 240: "The legislature finds that scenic and recreational highways are designated because of a need to develop management plans that will protect and preserve the scenic and recreational resources from loss through inappropriate development. Protection of scenic and recreational resources includes managing land use outside normal highway rights of way. The legislature recognizes that scenic and recreational highways are typically located in areas that are natural in character, along watercourses or through mountainous areas, or in areas with a view of such scenery." [1990 c 240 § 1.]

Chapter 47.40

ROADSIDE IMPROVEMENT AND BEAUTIFICATION

Sections

- | | |
|-----------|---------------------------------|
| 47.40.100 | State adopt-a-highway program. |
| 47.40.105 | Local adopt-a-highway programs. |

47.40.100 State adopt-a-highway program. (1) The department of transportation shall establish a state-wide adopt-a-highway litter control program whereby volunteer organizations may contribute to a cleaner environment and a more attractive state by adopting sections of state highway and picking up litter along those sections.

An organization whose name: (a) Endorses or opposes a particular candidate for public office, (b) advocates a position on a specific political issue, initiative, referendum, or piece of legislation, or (c) includes a reference to a political party shall not be eligible to participate in the adopt-a-highway program.

(2) In administering the adopt-a-highway, the department shall:

- (a) Provide a standardized application form, registration form, and contractual agreement for all volunteer

groups. Such forms shall notify the prospective participants of the risks and responsibilities to be assumed by either the department and/or the volunteer groups;

(b) Require all volunteers to be at least fifteen years of age;

(c) Require parental consent for all minors;

(d) Require at least one volunteer adult supervisor for every eight minors;

(e) Require one designated leader for each volunteer organization;

(f) Assign each volunteer organization a section of state highway for a specified period of time;

(g) Recognize the efforts of a participating organization by erecting and maintaining signs with the organization's name on both ends of the organization's section of highway;

(h) Provide appropriate safety equipment and "Volunteer Litter Crew Ahead" signs. Safety equipment, other than hardhats, issued to volunteer organizations must be returned to the department after each use for reuse by other volunteer groups;

(i) Provide safety training for all volunteers;

(j) Pay any and all premiums or assessments required under RCW 51.12.035 to secure medical aid benefits under chapter 51.36 RCW for all volunteers participating in the program;

(k) Maintain records of all injuries and accidents that occur;

(l) Adopt rules which establish a process to resolve any question of an organization's eligibility to participate in the adopt-a-highway program;

(m) Obtain permission from property owners who lease right of way before allowing a volunteer organization to adopt a section of highway on such leased property; and

(n) Establish procedures and guidelines for the adopt-a-highway program.

(3) Nothing in this section affects the rights or activities of, or agreements with, adjacent landowners, including the use of rights of way and crossings, nor impairs these rights and uses by the placement of signs. [1990 c 258 § 5.]

Legislative findings and intent—1990 c 258: "The legislature finds that despite the efforts of the department of transportation, the department of ecology, and the ecology youth corps to pick up litter along state highways, roadside litter in Washington state has increased by thirty-six percent since 1983. The legislature further finds that in twenty-seven states, volunteer organizations are able to give of their time and energy, demonstrate commitment to a clean environment, and discourage would-be litterers by keeping sections of highway litter free because those states have established programs to encourage and recognize such voluntary efforts. Therefore, it is the legislature's intent to establish an "adopt-a-highway" litter control program as a partnership between citizen volunteers and the state to reduce roadside litter and build civic pride in a litter-free Washington." [1990 c 258 § 4.]

47.40.105 Local adopt-a-highway programs. Local government legislative authorities may enact local "adopt-a-highway sign" programs which are not inconsistent with state or federal law. [1990 c 258 § 3.]

Legislative findings and intent—1990 c 258: See note following RCW 47.40.100.

Chapter 47.42

HIGHWAY ADVERTISING CONTROL ACT— SCENIC VISTAS ACT

Sections	
47.42.020	Definitions.
47.42.040	Permissible signs classified.
47.42.046	Recodified as RCW 47.36.310.
47.42.047	Recodified as RCW 47.36.320.
47.42.0475	Recodified as RCW 47.36.330.
47.42.052	Recodified as RCW 47.36.300.
47.42.160	Recodified as RCW 47.36.290.
47.42.170	Recodified as RCW 47.36.340.

47.42.020 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Department" means the Washington state department of transportation.

(2) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(3) "Interstate system" means any state highway which is or does become part of the national system of interstate and defense highways as described in section 103(d) of title 23, United States Code.

(4) "Maintain" means to allow to exist.

(5) "Person" means this state or any public or private corporation, firm, partnership, association, as well as any individual or individuals.

(6) "Primary system" means any state highway which is or does become part of the federal-aid primary system as described in section 103(b) of title 23, United States Code.

(7) "Scenic system" means (a) any state highway within any public park, federal forest area, public beach, public recreation area, or national monument, (b) any state highway or portion thereof outside the boundaries of any incorporated city or town designated by the legislature as a part of the scenic system, or (c) any state highway or portion thereof outside the boundaries of any incorporated city or town designated by the legislature as a part of the scenic and recreational highway system except for the sections of highways specifically excluded in RCW 47.42.025.

(8) "Sign" means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing that is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of the interstate system or other state highway.

(9) "Commercial and industrial areas" means any area zoned commercial or industrial by a county or municipal code, or if unzoned by a county or municipal code, that area occupied by three or more separate and distinct commercial or industrial activities, or any combination thereof, within a space of five hundred feet and the area within five hundred feet of such activities on both sides of the highway. The area shall be measured from the outer edges of the regularly used buildings, parking lots, or storage or processing areas of the commercial or industrial activity and not from the property

lines of the parcels upon which the activities are located. Measurements shall be along or parallel to the edge of the main traveled way of the highway. The following shall not be considered commercial or industrial activities:

(a) Agricultural, forestry, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands;

(b) Transient or temporary activities;

(c) Railroad tracks and minor sidings;

(d) Signs;

(e) Activities more than six hundred and sixty feet from the nearest edge of the right of way;

(f) Activities conducted in a building principally used as a residence.

If any commercial or industrial activity that has been used in defining or delineating an unzoned area ceases to operate for a period of six continuous months, any signs located within the former unzoned area become nonconforming and shall not be maintained by any person.

(10) "Roadside area information panel or display" means a panel or display located so as not to be readable from the main traveled way, erected in a safety rest area, scenic overlook, or similar roadside area, for providing motorists with information in the specific interest of the traveling public.

(11) "Temporary agricultural directional sign" means a sign on private property adjacent to state highway right of way to provide directional information to places of business offering for sale seasonal agricultural products on the property where the sale is taking place. [1991 c 94 § 1; 1990 c 258 § 1; 1987 c 469 § 2; 1985 c 376 § 2; 1984 c 7 § 222; 1977 ex.s. c 258 § 1; 1974 ex.s. c 80 § 1; 1971 ex.s. c 62 § 1; 1961 c 96 § 2.]

Legislative findings and intent—1990 c 258: See note following RCW 47.40.100.

Legislative intent—1985 c 376: "It is the intent of the legislature that state highway information and directional signs provide appropriate guidance to all motorists traveling throughout the state. Such guidance should include the identity, location, and types of recreational, cultural, educational, entertainment, or unique or unusual commercial activities whose principle source of visitation is derived from motorists not residing in the immediate locale of the activity. Such informational and directional signs shall comply with Title 23, United States Code and the rules adopted by the department under RCW 47.42.060." [1985 c 376 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.42.040 Permissible signs classified. It is declared to be the policy of the state that no signs which are visible from the main traveled way of the interstate system, primary system, or scenic system shall be erected or maintained except the following types:

(1) Directional or other official signs or notices that are required or authorized by law;

(2) Signs advertising the sale or lease of the property upon which they are located;

(3) Signs advertising activities conducted on the property on which they are located;

(4) Signs, not inconsistent with the policy of this chapter and the national policy set forth in section 131 of title 23, United States Code as codified and enacted by Public Law 85-767 and amended only by section

106, Public Law 86-342, and the national standards promulgated thereunder by the secretary of commerce or the secretary of transportation, advertising activities being conducted at a location within twelve miles of the point at which such signs are located: **PROVIDED,** That no sign lawfully erected pursuant to this subsection adjacent to the interstate system and outside commercial and industrial areas shall be maintained by any person after three years from May 10, 1971;

(5) Signs, not inconsistent with the policy of this chapter and the national policy set forth in section 131 of title 23, United States Code as codified and enacted by Public Law 85-767 and amended only by section 106, Public Law 86-342, and the regulations promulgated thereunder by the secretary of commerce or the secretary of transportation, designed to give information in the specific interest of the traveling public: **PROVIDED,** That no sign lawfully erected pursuant to this subsection adjacent to the interstate system and outside commercial and industrial areas shall be maintained by any person after three years from May 10, 1971;

(6) Signs lawfully in existence on October 22, 1965, determined by the commission, subject to the approval of the United States secretary of transportation, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance the preservation of which would be consistent with the purposes of chapter 47.42 RCW;

(7) Public service signs, located on school bus stop shelters, which:

(a) Identify the donor, sponsor, or contributor of said shelters;

(b) Contain safety slogans or messages which occupy not less than sixty percent of the area of the sign;

(c) Contain no other message;

(d) Are located on school bus shelters which are authorized or approved by city, county, or state law, regulation, or ordinance, and at places approved by the city, county, or state agency controlling the highway involved; and

(e) Do not exceed thirty-two square feet in area. Not more than one sign on each shelter may face in any one direction.

Subsection (7) of this section notwithstanding, the department of transportation shall adopt regulations relating to the appearance of school bus shelters, the placement, size, and public service content of public service signs located thereon, and the prominence of the identification of the donors, sponsors, or contributors of the shelters.

(8) Temporary agricultural directional signs, with the following restrictions:

(a) Signs shall be posted only during the period of time the seasonal agricultural product is being sold;

(b) Signs shall not be placed adjacent to the interstate highway system unless the sign qualifies as an on-premise sign;

(c) Signs shall not be placed within an incorporated city or town;

(d) Premises on which the seasonal agricultural products are sold must be within fifteen miles of the state

highway, and necessary supplemental signing on local roads must be provided before the installation of the signs on the state highway;

(e) Signs must be located so as not to restrict sight distances on approaches to intersections;

(f) The department shall establish a permit system and fee schedule and rules for the manufacturing, installation, and maintenance of these signs in accordance with the policy of this chapter;

(g) Signs in violation of these provisions shall be removed in accordance with the procedures in RCW 47.42.080;

Only signs of types 1, 2, 3, 7, and 8 may be erected or maintained within view of the scenic system. Signs of types 7 and 8 may also be erected or maintained within view of the federal aid primary system. [1991 c 94 § 2; 1990 c 258 § 2; 1985 c 376 § 3; 1979 c 69 § 1; 1975 1st ex.s. c 271 § 1; 1971 ex.s. c 62 § 4; 1961 c 96 § 4.]

Legislative findings and intent—1990 c 258: See note following RCW 47.40.100.

Legislative intent—1985 c 376: See note following RCW 47.42.020.

47.42.046 Recodified as RCW 47.36.310. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

47.42.047 Recodified as RCW 47.36.320. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

47.42.0475 Recodified as RCW 47.36.330. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

47.42.052 Recodified as RCW 47.36.300. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

47.42.160 Recodified as RCW 47.36.290. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

47.42.170 Recodified as RCW 47.36.340. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 47.50

HIGHWAY ACCESS MANAGEMENT

Sections

47.50.010	Findings—Access.
47.50.020	Definitions—Access.
47.50.030	Regulating connections.
47.50.040	Access permits.
47.50.050	Permit fee.
47.50.060	Permit review process.
47.50.070	Permit conditions.
47.50.080	Permit removal.
47.50.090	Access management standards.

47.50.010 Findings—Access. (1) The legislature finds that:

(a) Regulation of access to the state highway system is necessary in order to protect the public health, safety, and welfare, to preserve the functional integrity of the state highway system, and to promote the safe and efficient movement of people and goods within the state;

(b) The development of an access management program, in accordance with this chapter, which coordinates land use planning decisions by local governments and investments in the state highway system, will serve to control the proliferation of connections and other access approaches to and from the state highway system. Without such a program, the health, safety, and welfare of the residents of this state are at risk, due to the fact that uncontrolled access to the state highway system is a significant contributing factor to the congestion and functional deterioration of the system; and

(c) The development of an access management program in accordance with this chapter will enhance the development of an effective transportation system and increase the traffic-carrying capacity of the state highway system and thereby reduce the incidences of traffic accidents, personal injury, and property damage or loss; mitigate environmental degradation; promote sound economic growth and the growth management goals of the state; reduce highway maintenance costs and the necessity for costly traffic operations measures; lengthen the effective life of transportation facilities in the state, thus preserving the public investment in such facilities; and shorten response time for emergency vehicles.

(2) In furtherance of these findings, all state highways are hereby declared to be controlled access facilities as defined in RCW 47.50.020, except those highways that are defined as limited access facilities in chapter 47.52 RCW.

(3) It is the policy of the legislature that:

(a) The access rights of an owner of property abutting the state highway system are subordinate to the public's right and interest in a safe and efficient highway system; and

(b) Every owner of property which abuts a state highway has a right to reasonable access to that highway, unless such access has been acquired pursuant to chapter 47.52 RCW, but may not have the right of a particular means of access. The right of access to the state highway may be restricted if, pursuant to local regulation, reasonable access can be provided to another public road which abuts the property.

(4) The legislature declares that it is the purpose of this chapter to provide a coordinated planning process for the permitting of access points on the state highway system to effectuate the findings and policies under this section.

(5) Nothing in this chapter shall affect the right to full compensation under section 16, Article I of the state Constitution. [1991 c 202 § 1.]

Captions not law—1991 c 202: "Section captions and part headings as used in this act do not constitute any part of the law." [1991 c 202 § 22.] This act consists of chapter 47.50 RCW and RCW 70.94.521 through 70.94.551.

Effective date—1991 c 202: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of

the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 202 § 24.]

Severability—1991 c 202: "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." [1991 c 202 § 25.]

47.50.020 Definitions—Access. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Controlled access facility" means a transportation facility to which access is regulated by the governmental entity having jurisdiction over the facility. Owners or occupants of abutting lands and other persons have a right of access to or from such facility at such points only and in such manner as may be determined by the governmental entity.

(2) "Connection" means approaches, driveways, turn-outs, or other means of providing for the right of access to or from controlled access facilities on the state highway system.

(3) "Permitting authority" means the department for connections in unincorporated areas or a city or town within incorporated areas which are authorized to regulate access to state highways pursuant to chapter 47.24 RCW. [1991 c 202 § 2.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

47.50.030 Regulating connections. (1) Vehicular access and connections to or from the state highway system shall be regulated by the permitting authority in accordance with the provisions of this chapter in order to protect the public health, safety, and welfare.

(2) The department shall by July 1, 1992, adopt administrative procedures pursuant to chapter 34.05 RCW which establish state highway access standards and rules for its issuance and modification of access permits, closing of unpermitted connections, revocation of permits, and waiver provisions in accordance with this chapter. The department shall consult with the association of Washington cities and obtain concurrence of the city design standards committee as established by RCW 35.78.030 in the development and adoption of rules for access standards for city streets designated as state highways under chapter 47.24 RCW.

(3) Cities and towns shall, no later than July 1, 1993, adopt standards for access permitting on streets designated as state highways which meet or exceed the department's standards, provided that such standards may not be inconsistent with standards adopted by the department. [1991 c 202 § 3.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

47.50.040 Access permits. (1) No connection to a state highway shall be constructed or altered without obtaining an access permit in accordance with this chapter in advance of such action. A permitting authority has the authority to deny access to the state highway system at the location specified in the permit until the

permittee constructs or alters the connection in accordance with the permit requirements.

(2) The cost of construction or alteration of a connection shall be borne by the permittee, except for alterations which are not required by law or administrative rule, but are made at the request of and for the convenience of the permitting authority. The permittee, however, shall bear the cost of alteration of any connection which is required by the permitting authority due to increased or altered traffic flows generated by changes in the permittee's facilities or nature of business conducted at the location specified in the permit.

(3) Except as otherwise provided in this chapter, an unpermitted connection is subject to closure by the appropriate permitting authority which shall have the right to install barriers across or remove the connection. When the permitting authority determines that a connection is unpermitted and subject to closure, it shall provide reasonable notice of its impending action to the owner of property served by the connection. The permitting authority's procedures for providing notice and preventing the operation of unpermitted connections shall be adopted by rule. [1991 c 202 § 4.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

47.50.050 Permit fee. The department shall establish by rule a schedule of fees for permit applications made to the department. The fee shall be nonrefundable and shall be used only to offset the costs of administering the access permit review process and the costs associated with administering the provisions of this chapter. [1991 c 202 § 5.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

47.50.060 Permit review process. The review process for access permit applications made by the department shall be as follows: Any person seeking an access permit shall file an application with the department. The department by rule shall establish application form and content requirements. The fee required by RCW 47.50.050 must accompany the applications. [1991 c 202 § 6.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

47.50.070 Permit conditions. The permitting authority may issue a permit subject to any conditions necessary to carry out the provisions of this chapter, including, but not limited to, requiring the use of a joint-use connection. The permitting authority may revoke a permit if the applicant fails to comply with the conditions upon which the issuance of the permit was predicated. [1991 c 202 § 7.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

47.50.080 Permit removal. (1) Unpermitted connections to the state highway system in existence on July 1, 1990, shall not require the issuance of a permit and may

continue to provide access to the state highway system, unless the permitting authority determines that such a connection does not meet minimum acceptable standards of highway safety. However, a permitting authority may require that a permit be obtained for such a connection if a significant change occurs in the use, design, or traffic flow of the connection or of the state highway to which it provides access. If a permit is not obtained, the connection may be closed pursuant to RCW 47.50.040.

(2) Access permits granted prior to adoption of the permitting authorities' standards shall remain valid until modified or revoked. Access connections to state highways identified on plats and subdivisions approved prior to July 1, 1991, shall be deemed to be permitted pursuant to chapter 202, Laws of 1991. The permitting authority may, after written notification, under rules adopted in accordance with RCW 47.50.030, modify or revoke an access permit granted prior to adoption of the standards by requiring relocation, alteration, or closure of the connection if a significant change occurs in the use, design, or traffic flow of the connection.

(3) The permitting authority may issue a nonconforming access permit after finding that to deny an access permit would leave the property without a reasonable means of access to the public roads of this state. Every nonconforming access permit shall specify limits on the maximum vehicular use of the connection and shall be conditioned on the availability of future alternative means of access for which access permits can be obtained. [1991 c 202 § 8.]

Captions not law—Effective date—Severability—1991 c 202:
See notes following RCW 47.50.010.

47.50.090 Access management standards. (1) The department shall develop, adopt, and maintain an access control classification system for all routes on the state highway system, the purpose of which shall be to provide for the implementation and continuing applications of the provision of this chapter.

(2) The principal component of the access control classification system shall be access management standards, the purpose of which shall be to provide specific minimum standards to be adhered to in the planning for and approval of access to state highways.

(3) The control classification system shall be developed consistent with the following:

(a) The department shall, no later than January 1, 1993, adopt rules setting forth procedures governing the implementation of the access control classification system required by this chapter. The rule shall provide for input from the entities described in (b) of this subsection as well as for public meetings to discuss the access control classification system. Nothing in this chapter shall affect the validity of the department's existing or subsequently adopted rules concerning access to the state highway system. Such rules shall remain in effect until repealed or replaced by the rules required by this chapter.

(b) The access control classification system shall be developed in cooperation with counties, cities and towns,

the state department of community development, regional transportation planning organizations, and other local governmental entities, and for city streets designated as state highways pursuant to chapter 47.24 RCW, adopted with the concurrence of the city design standards committee.

(c) The rule required by this section shall provide that assignment of a road segment to a specific access category be made in consideration of the following criteria:

(i) Local land use plans and zoning, as set forth in comprehensive plans;

(ii) The current functional classification as well as potential future functional classification of each road on the state highway system;

(iii) Existing and projected traffic volumes;

(iv) Existing and projected state, local, and metropolitan planning organization transportation plans and needs;

(v) Drainage requirements;

(vi) The character of lands adjoining the highway;

(vii) The type and volume of traffic requiring access;

(viii) Other operational aspects of access;

(ix) The availability of reasonable access by way of county roads and city streets to a state highway; and

(x) The cumulative effect of existing and projected connections on the state highway system's ability to provide for the safe and efficient movement of people and goods within the state.

(d) Access management standards shall include, but not be limited to, connection location standards, safety factors, design and construction standards, desired levels of service, traffic control devices, and effective maintenance of the roads. The standards shall also contain minimum requirements for the spacing of connections, intersecting streets, roads, and highways.

(e) An access control category shall be assigned to each segment of the state highway system by July 1, 1993. [1991 c 202 § 9.]

Captions not law—Effective date—Severability—1991 c 202:
See notes following RCW 47.50.010.

Chapter 47.56

STATE TOLL BRIDGES, TUNNELS, AND FERRIES

Sections

47.56.365	Repealed.
47.56.711	Spokane river bridges.
47.56.7115	Spokane river toll bridge—Operation and maintenance responsibility and funding through 47.56.716 Repealed.
47.56.712	Spokane river toll bridge—Transfer of funds.
47.56.7125	County ferries—Deficit reimbursements—Capital improvement funds.
47.56.725	

47.56.365 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

47.56.711 Spokane river bridges. The state highway bridge across the Spokane river in the vicinity of Trent Avenue in Spokane shall be known and designated as the James E. Keefe bridge.

After September 1, 1990, ownership of the Spokane river toll bridge, known as the Maple Street bridge, shall revert to the city of Spokane. [1990 c 42 § 401; 1979 c 131 § 1.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Severability—1979 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." [1979 c 131 § 11.]

47.56.7115 Spokane river toll bridge—Operation and maintenance responsibility and funding. The city of Spokane shall be responsible for operating and maintaining the Spokane river toll bridge and the surrounding area except:

(1) The department of transportation shall remove the toll booths and restripe the approaches, as necessary, once the tolls have been removed.

(2) The department of transportation shall replace the bridge deck and upgrade the approaches. In order to accomplish this activity, the department of transportation shall pursue federal bridge replacement funds and the city of Spokane shall contribute three hundred thousand dollars towards the required matching funds. [1990 c 42 § 402.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

47.56.712 through 47.56.716 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

47.56.7125 Spokane river toll bridge—Transfer of funds. The state treasurer shall transfer all remaining funds in the Spokane river toll bridge revenue account to the motor vehicle fund to be used for the following purposes:

(1) Repay existing loans from the motor vehicle fund to the Spokane river toll bridge revenue account in the amount of six hundred sixteen thousand two dollars and thirty-three cents;

(2) Fund removal of toll booths and associated repairs on the Spokane river toll bridge; and

(3) Fund preliminary engineering of the bridge deck replacement on the Spokane river toll bridge.

Any remaining funds are reserved to provide matching funds for federal bridge replacement funds to replace the bridge deck in the 1991–93 biennium. [1990 c 42 § 404.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

47.56.725 County ferries—Deficit reimbursements—Capital improvement funds. (1) The department is hereby authorized to enter into a continuing agreement with Pierce, Skagit, and Whatcom counties pursuant to which the department shall, from time to time, direct the distribution to each of the counties the

amounts authorized in subsection (2) of this section in accordance with RCW 46.68.100.

(2) The department is authorized to include in each agreement a provision for the distribution of funds to each county to reimburse the county for fifty percent of the deficit incurred during each previous fiscal year in the operation and maintenance of the ferry system owned and operated by the county. The total amount to be reimbursed to Pierce, Skagit, and Whatcom counties collectively shall not exceed one million dollars in any biennium. Each county agreement shall contain a requirement that the county shall maintain tolls on its ferries at least equal to tolls in place on January 1, 1990.

(3) The annual fiscal year operating and maintenance deficit, if any, shall be determined by Pierce, Skagit, and Whatcom counties subject to review and approval of the department. The annual fiscal year operating and maintenance deficit is defined as the total of operations and maintenance expenditures less the sum of ferry toll revenues and that portion of fuel tax revenue distributions which are attributable to the county ferry as determined by the department. Distribution of the amounts authorized by subsection (2) of this section by the state treasurer shall be directed by the department upon the receipt of properly executed vouchers from each county.

(4) The county road administration board may evaluate requests by Pierce, Skagit, Wahkiakum, and Whatcom counties for county ferry capital improvement funds. The board shall evaluate the requests and, if approved by a majority of the board, submit the requests to the legislature for funding out of the amounts available under RCW 46.68.100(3). Any county making a request under this subsection shall first seek funding through the public works trust fund, or any other available revenue source, where appropriate. [1991 c 310 § 1; 1984 c 7 § 286; 1977 c 51 § 2; 1975–'76 2nd ex.s. c 57 § 2; 1975 1st ex.s. c 21 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1977 c 51: See note following RCW 46.68.100.

Chapter 47.60

PUGET SOUND FERRY AND TOLL BRIDGE SYSTEM

Sections	
47.60.150	Fixing of charges—Deposit, segregation, and disbursement of revenues.
47.60.160	Repealed.
47.60.326	Schedule of charges for state ferries—Review by department, factors considered—Rule-making by commission.
47.60.420	Additional revenue bonds, refunding bonds, authorized, 1961 Act—Prior charge against Puget Sound capital construction account if ferry system revenues insufficient.
47.60.440	Additional revenue bonds, refunding bonds, authorized, 1961 Act—Ferry system a revenue-producing undertaking—Debt service—Tolls on ferry system and Hood Canal bridge.
47.60.445	Hood Canal bridge—Tolls, upkeep costs.
47.60.540	Repealed.
47.60.543	Repealed.

47.60.150 Fixing of charges—Deposit, segregation, and disbursement of revenues. Subject to the provisions of RCW 47.60.326, the schedule of charges for the services and facilities of the system shall be fixed and revised from time to time by the commission so that the tolls and revenues collected together with any moneys in the Puget Sound ferry operations account transferred to the ferry system revolving account for maintenance and operation, and all moneys in the Puget Sound capital construction account available for debt service will yield annual revenue and income sufficient, after allowance for all operating, maintenance, and repair expenses to pay the interest and principal and sinking fund charges for all outstanding revenue bonds, and to create and maintain a fund for ordinary renewals and replacements: **PROVIDED**, That if provision is made by any resolution for the issuance of revenue bonds for the creation and maintenance of a special fund for rehabilitating, rebuilding, enlarging, or improving all or any part of the ferry system then such schedule of tolls and rates of charges shall be fixed and revised so that the revenue and income will also be sufficient to comply with such provision.

All income and revenues as collected shall be paid to the state treasurer for the account of the department as a separate trust fund and to be segregated and disbursed upon order of the department: **PROVIDED**, That the fund so segregated and set apart for the payment of the revenue bonds may be remitted to and held by a designated trustee in such manner and with such collateral as may be provided in the resolution authorizing the issuance of said bonds. No expenditure may be made from the revenue fund established under this section and the bond resolution without an appropriation by law. Nothing in this section requires tolls on the Hood Canal bridge except as may be required by any bond covenants. [1990 c 42 § 405. Prior: 1986 c 66 § 2; 1986 c 23 § 1; 1983 c 3 § 135; 1972 ex.s. c 24 § 5; 1961 c 13 § 47-.60.150; prior: 1949 c 179 § 5, part; Rem Supp. 1949 § 6584-34, part.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—1986 c 66: See note following RCW 46.68.100.

Effective date—1986 c 23: "This act shall take effect on July 1, 1987. The secretary of transportation may immediately take such steps as may be necessary to insure that this act is implemented on its effective date." [1986 c 23 § 2.]

47.60.160 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

47.60.326 Schedule of charges for state ferries—Review by department, factors considered—Rule-making by commission. (1) In order to maintain an adequate, fair, and economically sound schedule of charges for the transportation of passengers, vehicles, and commodities on the Washington state ferries, the department of transportation each year shall conduct a full review of such charges.

(2) Prior to February 1st of each odd-numbered year the department shall transmit to the transportation commission a report of its review together with its recommendations for the revision of a schedule of charges for the ensuing biennium. The commission on or before July 1st of that year shall adopt as a rule, in the manner provided by the Washington administrative procedure act, a schedule of charges for the Washington state ferries for the ensuing biennium commencing July 1st. The schedule may initially be adopted as an emergency rule if necessary to take effect on, or as near as possible to, July 1st.

(3) The department in making its review and formulating recommendations and the commission in adopting a schedule of charges may consider any of the following factors:

(a) The amount of subsidy available to the ferry system for maintenance and operation;

(b) The time and distance of ferry runs;

(c) The maintenance and operation costs for ferry runs with a proper adjustment for higher costs of operating outmoded or less efficient equipment;

(d) The efficient distribution of traffic between cross-sound routes;

(e) The desirability of reasonable commutation rates for persons using the ferry system to commute daily to work;

(f) The effect of proposed fares in increasing walk-and vehicular passenger use;

(g) The effect of proposed fares in promoting all types of ferry use during nonpeak periods;

(h) Such other factors as prudent managers of a major ferry system would consider.

(4) If at any time during the biennium it appears that projected toll revenues from the ferry system, together with the transfer from the Puget Sound ferry operations account to the ferry system revolving account and any other operating subsidy available to the Washington state ferries, will be less than the projected total cost of maintenance and operation of the Washington state ferries for the biennium, the department shall forthwith undertake a review of its schedule of charges to ascertain whether or not the schedule of charges should be revised. The department shall, upon completion of its review report, submit its recommendation to the transportation commission which may in its sound discretion revise the schedule of charges as required to meet necessary maintenance and operation expenditures of the ferry system for the biennium or may defer action until the regular annual review and revision of ferry charges as provided in subsection (2) of this section.

(5) The provisions of RCW 47.60.330 relating to public participation shall apply to the process of revising ferry tolls under this section. [1990 c 42 § 406; 1983 c 15 § 25; 1981 c 344 § 5.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Severability—1983 c 15: See RCW 47.64.910.

Severability—1981 c 344: "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." [1981 c 344 § 8.]

47.60.420 Additional revenue bonds, refunding bonds, authorized, 1961 Act—Prior charge against Puget Sound capital construction account if ferry system revenues insufficient. To the extent that all revenues from the Washington state ferry system available therefor are insufficient to provide for the payment of principal and interest on the bonds authorized and issued under RCW 47.60.400 through 47.60.470 and for sinking fund requirements established with respect thereto and for payment into such reserves as the department has established with respect to the securing of the bonds, there is imposed a first and prior charge against the Puget Sound capital construction account of the motor vehicle fund created by RCW 47.60.505 and, to the extent required, against all revenues required by RCW 46.68.100 to be deposited in the Puget Sound capital construction account.

To the extent that the revenues from the Washington state ferry system available therefor are insufficient to meet required payments of principal and interest on bonds, sinking fund requirements, and payments into reserves, the department shall use moneys in the Puget Sound capital construction account for such purpose. [1990 c 42 § 407; 1986 c 66 § 4; 1984 c 7 § 330; 1961 ex.s. c 9 § 3.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—1986 c 66: See note following RCW 46.68.100.

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.440 Additional revenue bonds, refunding bonds, authorized, 1961 Act—Ferry system a revenue-producing undertaking—Debt service—Tolls on ferry system and Hood Canal bridge. The Washington state ferry system shall be efficiently managed, operated, and maintained as a revenue-producing undertaking. Subject to the provisions of RCW 47.60.326 the commission shall maintain and revise from time to time as necessary a schedule of tolls and charges on said ferry system and, if necessary to comply with bond covenants, on the Hood Canal bridge which together with any moneys in the Puget Sound ferry operations account transferred to the ferry system revolving account for maintenance and operation and all moneys in the Puget Sound capital construction account available for debt service will produce net revenue available for debt service, in each fiscal year, in an amount at least equal to minimum annual debt service requirements as hereinafter provided. Minimum annual debt service requirements as used in this section shall include required payments of principal and interest, sinking fund requirements, and payments into reserves on all outstanding revenue bonds authorized by RCW 47.60.400 through 47.60.470.

The provisions of law relating to the revision of tolls and charges to meet minimum annual debt service requirements from net revenues as required by this section shall be binding upon the commission but shall not be deemed to constitute a contract to that effect for the

benefit of the holders of such bonds. [1990 c 42 § 408; 1986 c 66 § 6; 1983 c 3 § 139; 1972 ex.s. c 24 § 7; 1963 ex.s. c 3 § 42; 1961 ex.s. c 9 § 5.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—1986 c 66: See note following RCW 46.68.100.

47.60.445 Hood Canal bridge—Tolls, upkeep costs. Notwithstanding the provisions of RCW 47.56.240 and 47.56.245 the transportation commission shall not collect tolls on the Hood Canal bridge for any purpose except where necessary to comply with bond covenants.

The cost of maintenance, upkeep, and repair may be paid from funds appropriated for the construction and maintenance of the primary state highways of the state of Washington. [1990 c 42 § 409.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

47.60.540 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

47.60.543 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 47.68

AERONAUTICS

(Formerly: Chapter 14.04 RCW, Aeronautics commission)

Sections

47.68.236 Aircraft search and rescue, safety, and education account.

47.68.236 Aircraft search and rescue, safety, and education account. There is hereby created in the state treasury an account to be known as the aircraft search and rescue, safety, and education account. All moneys received by the department under RCW 47.68.233 shall be deposited in such account. [1991 1st sp.s. c 13 § 38; 1985 c 57 § 63; 1983 c 3 § 144; 1967 c 207 § 3. Formerly RCW 14.04.236.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

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

Chapter 47.76

RAIL FREIGHT SERVICE

Sections

47.76.030 Essential rail assistance account—Purposes.
47.76.040 Sale for use as rail service—Time limit.
47.76.050 Sale for other use—Authorized buyers, notice, terms, deed, deposit of moneys.
47.76.060 Sale for other use—Governmental entity.
47.76.070 Rent or lease of lands.
47.76.080 Sale at public auction.
47.76.090 Eminent domain exemptions.

- 47.76.100 Legislative finding.
- 47.76.110 State freight rail program.
- 47.76.120 Freight rail planning.
- 47.76.130 Freight rail preservation program.
- 47.76.140 Rail corridor preservation guidelines.
- 47.76.150 Goals of rail service preservation—Local participation.
- 47.76.160 Essential rail banking account—Creation, uses.
- 47.76.170 Evaluating program performance.
- 47.76.180 Tax relief study.
- 47.76.190 Monitoring federal rail policies.

47.76.030 Essential rail assistance account—Purposes. (1) The essential rail assistance account is hereby created in the state treasury. Moneys in the account may be appropriated only for the purposes specified in this section.

(2) Moneys appropriated from the account to the department of transportation may be distributed by the department to first class cities, county rail districts, counties, and port districts for the purpose of:

- (a) Acquiring, maintaining, or improving branch rail lines;
- (b) Operating railroad equipment necessary to maintain essential rail service;
- (c) Construction of transloading facilities to increase business on light density lines or to mitigate the impacts of abandonment; or
- (d) Preservation, including operation, of viable light density lines, as identified by the Washington state department of transportation, in compliance with this chapter.

(3) First class cities, county rail districts, counties, and port districts may grant franchises to private railroads for the right to operate on lines acquired, repaired, or improved under this chapter.

(4) If rail lines or rail rights of way are used by county rail districts, port districts, state agencies, or other public agencies for the purposes of rail operations and are later abandoned, the rail lines or rail rights of way cannot be used for any other purposes without the consent of the underlying fee title holder or reversionary rights holder, or compensation has been made to the underlying fee title holder or reversionary rights holder.

(5) Moneys distributed under subsection (2) of this section shall not exceed eighty percent of the cost of the service or project undertaken. At least twenty percent of the cost shall be provided by the first class city, county, port district, or other local sources.

(6) The amount distributed under this section shall be repaid to the state by the first class city, county rail district, county, or port district. The repayment shall occur within a period not longer than fifteen years, as set by the department, of the distribution of the moneys and shall be deposited in the essential rail assistance account. The repayment schedule and rate of interest, if any, shall be set at the time of the distribution of the moneys. [1991 1st sp.s. c 13 § 22; 1991 c 363 § 125; 1990 c 43 § 11. Prior: 1985 c 432 § 2; 1985 c 57 § 64; 1983 c 303 § 6.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

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

Construction—Severability—Headings—1990 c 43: See notes following RCW 47.76.100.

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

Severability—1983 c 303: See RCW 36.60.905.

County rail districts: Chapter 36.60 RCW.

Port districts, acquisition and operation of facilities: RCW 53.08.020.

47.76.040 Sale for use as rail service—Time limit. The department shall sell property acquired under RCW 47.76.140 to a county rail district established under chapter 36.60 RCW, a county, a port district, or any other public or private entity authorized to operate rail service. Any public or private entity which originally donated funds to the department pursuant to RCW 47.76.140 shall receive credit against the purchase price for the amount donated to the department, less management costs, in the event such public or private entity purchases the property from the department.

If no county rail district, county, port district, or other public or private entity authorized to operate rail service offers to purchase such property within six years after its acquisition by the department, the department may sell such property in the manner provided in RCW 47.76-.050. Failing this, the department may sell or convey all such property in the manner provided in RCW 47.76-.060 or 47.76.080. [1991 1st sp.s. c 15 § 61; 1991 c 363 § 126; 1985 c 432 § 3.]

Construction—Severability—1991 1st sp.s. c 15: See note following RCW 46.68.110.

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

47.76.050 Sale for other use—Authorized buyers, notice, terms, deed, deposit of moneys. (1) If real property acquired by the department under RCW 47.76.140 is not sold to a public or private entity authorized to operate rail service within six years of its acquisition by the department, the department may sell the property at fair market value to any of the following governmental entities or persons:

- (a) Any other state agency;
- (b) The city or county in which the property is situated;
- (c) Any other municipal corporation;
- (d) The former owner, heir, or successor of the property from whom the property was acquired;
- (e) Any abutting private owner or owners.

(2) Notice of intention to sell under this section shall be given by publication in one or more newspapers of general circulation in the area in which the property is situated not less than thirty days prior to the intended date of sale.

(3) Sales to purchasers may at the department's option be for cash or by real estate contract.

(4) Conveyances made under this section shall be by deed executed by the secretary of transportation and shall be duly acknowledged.

(5) All moneys received under this section shall be deposited in the essential rail assistance account of the general fund. [1991 1st sp.s. c 15 § 62; 1985 c 432 § 4.]

Construction—Severability—1991 1st sp.s. c 15: See note following RCW 46.68.110.

47.76.060 Sale for other use—Governmental entity. If real property acquired by the department under RCW 47.76.140 is not sold to a public or private entity authorized to operate rail service within six years of its acquisition by the department, the department may transfer and convey the property to the United States, its agencies or instrumentalities, to any other state agency, to any county or city or port district of this state when, in the judgment of the secretary, the transfer and conveyance is consistent with the public interest. Whenever the secretary makes an agreement for any such transfer or conveyance, the secretary shall execute and deliver to the grantee a deed of conveyance, easement, or other instrument, duly acknowledged, as necessary to fulfill the terms of the agreement. All moneys paid to the state of Washington under this section shall be deposited in the essential rail assistance account of the general fund. [1991 1st sp.s. c 15 § 63; 1985 c 432 § 5.]

Construction—Severability—1991 1st sp.s. c 15: See note following RCW 46.68.110.

47.76.070 Rent or lease of lands. The department is authorized subject to the provisions and requirements of zoning ordinances of political subdivisions of government, to rent or lease any lands acquired under RCW 47.76.140, upon such terms and conditions as the department determines. [1991 1st sp.s. c 15 § 64; 1985 c 432 § 6.]

Construction—Severability—1991 1st sp.s. c 15: See note following RCW 46.68.110.

47.76.080 Sale at public auction. (1) If real property acquired by the department under RCW 47.76.140 is not sold to a public or private entity authorized to operate rail service within six years of its acquisition by the department, the department may, in its discretion, sell the property at public auction in accordance with subsections (2) through (5) of this section.

(2) The department shall first give notice of the sale by publication on the same day of the week for two consecutive weeks, with the first publication at least two weeks before the date of the auction, in a legal newspaper of general circulation in the area where the property to be sold is located. The notice shall be placed in both the legal notices section and the real estate classified section of the newspaper. The notice shall contain a description of the property, the time and place of the auction, and the terms of the sale. The sale may be for cash or by real estate contract.

(3) In accordance with the terms set forth in the notice, the department shall sell the property at the public auction to the highest and best bidder if the bid is equal to or higher than the appraised fair market value of the property.

(4) If no bids are received at the auction or if all bids are rejected, the department may, in its discretion, enter into negotiations for the sale of the property or may list

the property with a licensed real estate broker. No property may be sold by negotiations or through a broker for less than the property's appraised fair market value. Any offer to purchase real property under this subsection shall be in writing and may be rejected at any time before written acceptance by the department.

(5) Conveyances made under this section shall be by deed executed by the secretary of transportation and shall be duly acknowledged.

(6) All moneys received under this section shall be deposited in the essential rail assistance account of the general fund. [1991 1st sp.s. c 15 § 65; 1985 c 432 § 7.]

Construction—Severability—1991 1st sp.s. c 15: See note following RCW 46.68.110.

47.76.090 Eminent domain exemptions. Transfers of ownership of property acquired under RCW 47.76.140 are exempt from chapters 8.25 and 8.26 RCW. [1991 1st sp.s. c 15 § 66; 1985 c 432 § 8.]

Construction—Severability—1991 1st sp.s. c 15: See note following RCW 46.68.110.

47.76.100 Legislative finding. The legislature finds that a balanced multimodal transportation system is required to maintain the state's commitment to the growing mobility needs of its citizens and commerce. Freight rail systems are important elements of this multimodal system.

Washington's economy relies heavily upon the freight rail system to ensure movement of the state's agricultural, chemical, and natural resource products to local, national, and international markets. Since 1970, Washington has lost nearly one-third of its five thousand two hundred rail miles to abandonment and bankruptcies, leaving approximately three thousand four hundred rail miles. Recognizing the implications of this trend for freight mobility and the state's economic future, the legislature believes that better freight rail planning, better cooperation to preserve rail lines, and increased financial assistance from the state are necessary to maintain and improve the freight rail system within the state. [1990 c 43 § 1.]

Construction—1990 c 43: "This act shall be liberally construed to give effect to the intent of this act." [1990 c 43 § 56.]

Severability—1990 c 43: "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." [1990 c 43 § 57.]

Headings—1990 c 43: "Section headings, part headings, and the index as used in this act do not constitute any part of the law." [1990 c 43 § 55.]

47.76.110 State freight rail program. The Washington state department of transportation shall implement a state freight rail program for rail coordination, planning, and technical assistance. [1990 c 43 § 2.]

Construction—Severability—Headings—1990 c 43: See notes following RCW 47.76.100.

47.76.120 Freight rail planning. (1) The department of transportation shall continue its responsibility for the development and implementation of the state rail plan

and programs, and the utilities and transportation commission shall continue its responsibility for intrastate rates, service, and safety issues.

(2) The department of transportation shall maintain an enhanced data file on the rail system. Proprietary annual station traffic data from each railroad and the modal use of major shippers shall be obtained to the extent that such information is available.

(3) The department of transportation shall provide technical assistance, upon request, to state agencies and local interests. Technical assistance includes, but is not limited to, the following:

(a) Abandonment cost-benefit analyses, to include the public and private costs and benefits of maintaining the service, providing alternative service including necessary road improvement costs, or of taking no action;

(b) Assistance in the formation of county rail districts and port districts; and

(c) Feasibility studies for rail service continuation and/or rail service assistance.

(4) With funding authorized by the legislature, the department of transportation shall develop a cooperative process to conduct community and business information programs and to regularly disseminate information on rail matters. The following agencies and jurisdictions shall be involved in the process:

(a) The state departments of community development and trade and economic development;

(b) Local jurisdictions and local economic development agencies; and

(c) Other interested public and private organizations. [1990 c 43 § 3.]

Construction—Severability—Headings—1990 c 43: See notes following RCW 47.76.100.

47.76.130 Freight rail preservation program. The state, counties, local communities, railroads, labor, and shippers all benefit from continuation of rail service and should participate in its preservation. Lines which provide benefits to the state and local jurisdictions, such as avoided roadway costs, reduced traffic congestion, economic development potential, environmental protection, and safety, should be assisted through the joint efforts of the state, local jurisdictions, and the private sector.

(1) The department of transportation shall continue to monitor the status of the state's light density line system through the state rail plan and various analyses, and shall seek alternatives to abandonment prior to interstate commerce commission proceedings, where feasible.

(2) The utilities and transportation commission shall intervene in interstate commerce commission proceedings on abandonments, when necessary, to protect the state's interest.

(3) As conditions warrant, the following criteria shall be used for identifying the state's essential rail system:

(a) Established regional and short-line carriers excluding private operations which are not common carriers;

(b) Former state project lines, which are lines that have been studied and have received funds from the state and federal governments;

(c) Lines serving major agricultural and forest product areas or terminals, with such terminals generally being within a fifty-mile radius of producing areas, and sites associated with commodities shipped by rail;

(d) Lines serving ports, seaports, and navigable river ports;

(e) Lines serving power plants or energy resources;

(f) Lines used for passenger service;

(g) Mainlines connecting to the national and Canadian rail systems;

(h) Major intermodal service points or hubs; and

(i) The military's strategic rail network.

(4) Local jurisdictions may implement rail service preservation projects in the absence of state participation.

(5) The department of transportation shall continue to monitor projects for which it provides assistance. [1990 c 43 § 4.]

Construction—Severability—Headings—1990 c 43: See notes following RCW 47.76.100.

47.76.140 Rail corridor preservation guidelines. In rail banking situations where it is not practicable to implement or continue freight rail service operations until some future date and the line's right of way is available for purchase and/or meets the criteria of chapter 47.76 RCW:

(1) The department of transportation shall preserve rail corridors for future rail service by purchasing the rights of way with funds specifically appropriated from the essential rail banking account created in RCW 47.76.160.

(2) Acquisition of rights of way may also include track, bridges, and associated elements.

(3) All corridors purchased under the rail bank program shall be identified by the department of transportation.

(4) All corridors acquired by governmental entities by donation or reversion for future rail use shall be identified in the rail bank program.

(5) Any rail rights of way acquired with state money will be for present or future rail purposes and can only be used for other purposes with the consent of the Washington state department of transportation and the consent of the underlying fee title holder or reversionary rights holder, or if compensation has been made to the underlying fee title holder or reversionary rights holder. [1990 c 43 § 5.]

Construction—Severability—Headings—1990 c 43: See notes following RCW 47.76.100.

47.76.150 Goals of rail service preservation—Local participation. State funding for rail service preservation shall benefit the state's interests, which include reducing public roadway maintenance and repair costs, increasing economic development opportunities, preserving jobs, and enhancing safety, and shall be contingent upon appropriate local participation. [1990 c 43 § 6.]

Construction—Severability—Headings—1990 c 43: See notes following RCW 47.76.100.

47.76.160 Essential rail banking account—Creation, uses. (1) The essential rail banking account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes specified in this section.

(2) Moneys in the account may be used by the department to:

(a) Purchase unused rail rights of way; or

(b) Provide up to eighty percent of the funding through loans to first class cities, port districts, counties, and county rail districts to purchase unused rail rights of way.

(3) Use of the moneys pursuant to subsection (2) of this section shall be for rights of way that meet the following criteria:

(a) The right of way has been identified, evaluated, and analyzed in the state rail plan prepared pursuant to this chapter;

(b) The right of way may be or has been abandoned;

(c) The right of way has potential for future rail service; and

(d) Reestablishment of rail service would benefit the state of Washington; and this benefit shall be based on the public and private costs and benefits of reestablishing the service compared with alternative service including necessary road improvement costs, or of taking no action.

Funds in the account may be expended for this purpose only with legislative appropriation. Funds for acquisition of any line shall be expended only after obtaining the approval of the legislative transportation committee. The department may also expend funds from the receipt of a donation of funds sufficient to cover the property acquisition and management costs. The department may receive donations of funds for this purpose, which shall be conditioned upon, and made in consideration for the repurchase rights contained in RCW 47.76.040. The department or the participating local jurisdiction shall be responsible for maintaining the right of way, including provisions for fire and weed control and for liability associated with ownership. Nothing in this section and in RCW 47.76.140 and 47.76.030 shall be interpreted or applied so as to impair the reversionary rights of abutting landowners, if any, without just compensation. [1991 1st sp.s. c 13 § 120; 1991 c 363 § 127; 1990 c 43 § 7.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

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

Construction—Severability—Headings—1990 c 43: See notes following RCW 47.76.100.

47.76.170 Evaluating program performance. The department shall evaluate the state freight rail program performance at the end of six years with respect to past and current conditions and future needs. The results of this evaluation shall be presented to the legislative transportation committee. [1990 c 43 § 8.]

Construction—Severability—Headings—1990 c 43: See notes following RCW 47.76.100.

47.76.180 Tax relief study. The department of revenue, working with the department of transportation, shall study and report its findings to the legislative transportation committee, by December 1, 1991, with respect to a potential tax relief program under Title 84 RCW for railroad operating properties, which shall provide tax credits for railroad participation in rail service preservation or improvement projects implemented on the light density line system. [1990 c 43 § 9.]

Construction—Severability—Headings—1990 c 43: See notes following RCW 47.76.100.

47.76.190 Monitoring federal rail policies. The department of transportation shall continue to monitor federal rail policies and congressional action and communicate to Washington's congressional delegation and federal transportation agencies the need for a balanced transportation system and associated funding. [1990 c 43 § 10.]

Construction—Severability—Headings—1990 c 43: See notes following RCW 47.76.100.

Chapter 47.78

HIGH CAPACITY TRANSPORTATION DEVELOPMENT

(Formerly: Rail service development)

Sections

47.78.010 High capacity transportation account.

47.78.010 High capacity transportation account. There is hereby established in the state treasury the high capacity transportation account. Money in the account shall be used, after appropriation, for local high capacity transportation purposes including rail freight. [1991 1st sp.s. c 13 §§ 66, 121; 1990 c 43 § 47; 1987 c 428 § 1.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Departmental review—1990 c 43: "The department of transportation shall review the high capacity transportation account funding sources and allocation formula and propose any appropriate changes to the 1991 legislature." [1990 c 43 § 46.]

Construction—Severability—Headings—1990 c 43: See notes following RCW 47.76.100.

Effective date—1987 c 428: "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 July 1, 1987." [1987 c 428 § 4.]

Chapter 47.80

REGIONAL TRANSPORTATION PLANNING ORGANIZATIONS

Sections

47.80.010 Findings—Declaration.

47.80.020 Regional transportation planning organizations authorized.

47.80.030 Regional transportation planning organizations—Duties.

47.80.040 Transportation policy boards.

- 47.80.050 Allocation of regional transportation planning funds.
 47.80.900 Severability—1990 1st ex.s. c 17.
 47.80.901 Part, section headings not law—1990 1st ex.s. c 17.

47.80.010 Findings—Declaration. The legislature finds that while the transportation system in Washington is owned and operated by numerous public jurisdictions, it should function as one interconnected and coordinated system. Transportation planning, at all jurisdictional levels, should be coordinated with local comprehensive plans. Further, local jurisdictions and the state should cooperate to achieve both state-wide and local transportation goals. To facilitate this coordination and cooperation among state and local jurisdictions, the legislature declares it to be in the state's interest to establish a coordinated planning program for regional transportation systems and facilities throughout the state. [1990 1st ex.s. c 17 § 53.]

47.80.020 Regional transportation planning organizations authorized. The legislature hereby authorizes creation of regional transportation planning organizations within the state. Each regional transportation planning organization shall be formed through the voluntary association of local governments within a county, or within geographically contiguous counties. Each organization shall:

- (1) Encompass at least one complete county;
- (2) Have a population of at least one hundred thousand, or contain a minimum of three counties; and
- (3) Have as members all counties within the region, and at least sixty percent of the cities and towns within the region representing a minimum of seventy-five percent of the cities' and towns' population.

The state department of transportation must verify that each regional transportation planning organization conforms with the requirements of this section.

In urbanized areas, the regional transportation planning organization is the same as the metropolitan planning organization designated for federal transportation planning purposes. [1990 1st ex.s. c 17 § 54.]

47.80.030 Regional transportation planning organizations—Duties. (1) Each regional transportation planning organization shall:

- (a) Certify that the transportation elements of comprehensive plans adopted by counties, cities, and towns within the region conform with the requirements of RCW 36.70A.070, and are consistent with regional transportation plans as provided for in (b) of this subsection;
- (b) Develop and adopt a regional transportation plan that is consistent with county, city, and town comprehensive plans and state transportation plans. Regional transportation planning organizations are encouraged to use county, city, and town comprehensive plans that existed prior to July 1, 1990, as the basis of its regional transportation plan whenever possible. Such plans shall address existing or planned transportation facilities and services that exhibit one or more of the following characteristics:
 - (i) Physically crosses member county lines;

- (ii) Is or will be used by a significant number of people who live or work outside the county in which the facility, service, or project is located;

- (iii) Significant impacts are expected to be felt in more than one county;

- (iv) Potentially adverse impacts of the facility, service, or project can be better avoided or mitigated through adherence to regional policies;

- (v) Transportation needs addressed by a project have been identified by the regional transportation planning process and the remedy is deemed to have regional significance;

- (c) Designate a lead planning agency to coordinate preparation of the regional transportation plan. The lead planning agency may be a regional council, a county, city, or town agency, or a Washington state department of transportation district;

- (d) Review the regional transportation plan biennially for currency; and

- (e) Forward the adopted plan, and documentation of the biennial review of it, to the state department of transportation.

(2) All transportation projects within the region that have an impact upon regional facilities or services must be consistent with the plan.

(3) In order to ensure state-wide consistency in the regional transportation planning process, the state department of transportation shall:

- (a) In cooperation with regional transportation planning organizations, establish minimum standards for development of a regional transportation plan;

- (b) Facilitate coordination between regional transportation planning organizations; and

- (c) Through the regional transportation planning process, and through state planning efforts as required by RCW 47.01.071, identify and jointly plan improvements and strategies within those corridors important to moving people and goods on a regional or state-wide basis. [1990 1st ex.s. c 17 § 55.]

47.80.040 Transportation policy boards. Each regional transportation planning organization shall create a transportation policy board. Transportation policy boards shall provide policy advice to the regional transportation planning organization and shall allow representatives of major employers within the region, the department of transportation, transit districts, port districts, and member cities, towns, and counties within the region to participate in policy making. [1990 1st ex.s. c 17 § 56.]

47.80.050 Allocation of regional transportation planning funds. Biennial appropriations to the department of transportation to carry out the regional transportation planning program shall set forth the amounts to be allocated as follows:

- (1) A base amount per county for each county within each regional transportation planning organization, to be distributed to the lead planning agency;

- (2) An amount to be distributed to each lead planning agency on a per capita basis; and

(3) An amount to be administered by the department of transportation as a discretionary grant program for special regional planning projects, including grants to allow counties which have significant transportation interests in common with an adjoining region to also participate in that region's planning efforts. [1990 1st ex.s. c 17 § 57.]

47.80.900 Severability—1990 1st ex.s. c 17. See RCW 36.70A.900.

47.80.901 Part, section headings not law—1990 1st ex.s. c 17. See RCW 36.70A.901.

Chapter 47.82 AMTRAK

Sections

47.82.010	Service improvement program.
47.82.020	Depot upgrading.
47.82.030	Service extension.
47.82.040	Coordination with other rail systems and common carriers.
47.82.050	Funding recommendations.
47.82.900	Construction—Severability—Headings—1990 c 43.

47.82.010 Service improvement program. The department, in conjunction with local jurisdictions, shall coordinate as appropriate with the designated metropolitan planning organizations to develop a program for improving Amtrak passenger rail service. The program may include:

(1) Determination of the appropriate level of Amtrak passenger rail service;

(2) Implementation of higher train speeds for Amtrak passenger rail service, where safety considerations permit;

(3) Recognition, in the state's long-range planning process, of potential higher speed intercity passenger rail service, while monitoring socioeconomic and technological conditions as indicators for higher speed systems; and

(4) Identification of existing intercity rail rights of way which may be used for public transportation corridors in the future. [1990 c 43 § 36.]

47.82.020 Depot upgrading. The department shall, when feasible, assist local jurisdictions in upgrading Amtrak depots. Multimodal use of these facilities shall be encouraged. [1990 c 43 § 37.]

47.82.030 Service extension. (1) The department, in conjunction with local jurisdictions, shall coordinate as appropriate with designated metropolitan and provincial transportation organizations to pursue resumption of Amtrak service from Seattle to Vancouver, British Columbia, via Everett, Mount Vernon, and Bellingham.

(2) The department, in conjunction with local jurisdictions, shall study potential Amtrak service on the following routes:

(a) Daytime Spokane–Wenatchee–Everett–Seattle service;

(b) Daytime Spokane–Tri–Cities–Vancouver–Portland service;

(c) Tri–Cities–Yakima–Ellensburg–Seattle service, if the Stampede Pass route is reopened; and

(d) More frequent Portland–Vancouver–Kelso–Centralia–Olympia–Tacoma–Seattle service or increments thereof. [1990 c 43 § 38.]

47.82.040 Coordination with other rail systems and common carriers. The department, with other state and local agencies shall coordinate as appropriate with designated metropolitan planning organizations to provide public information with respect to common carrier passenger transportation. This information may include maps, routes, and schedules of passenger rail service, local transit agencies, air carriers, private ground transportation providers, and international, state, and local ferry services.

The state shall continue its cooperative relationship with Amtrak and Canadian passenger rail systems. [1990 c 43 § 39.]

47.82.050 Funding recommendations. The department, in conjunction with local jurisdictions, shall recommend to the legislature the appropriate level, source, and justification for funding of improved Amtrak passenger rail service. [1990 c 43 § 40.]

47.82.900 Construction—Severability—Headings—1990 c 43. See notes following RCW 47.76.100.

Chapter 47.86 AIR TRANSPORTATION COMMISSION

Sections

47.86.010	Legislative findings, intent.
47.86.020	Creation, membership.
47.86.030	Studies.
47.86.040	Consultants, funding.
47.86.050	Operation, dissolution of commission.
47.86.060	Staff, budget.
47.86.900	Expiration.
47.86.901	Severability—1990 c 298.

47.86.010 Legislative findings, intent. The legislature finds that with the increase in air traffic operations, combined with the projections for the rapid expansion of these operations in both the short and the long term, concerns regarding the environmental, health, social, and economic impacts of air traffic are increasing as well. The legislature also finds that advancing Washington's position as a national and international trading leader is dependent upon the development of a highly competitive, state-wide passenger and cargo air transportation system. Therefore, there is an obvious need for improved coordination of local, federal, and state efforts to develop state-wide air transportation policies to promote continued economic development and to mitigate the negative impacts of air traffic on surrounding communities.

The legislature seeks to provide for the comprehensive examination of air transportation issues, taking into

consideration the data and conclusions of appropriate air traffic studies, including but not limited to those currently underway by various public ports of Washington, local jurisdictions, the department of transportation, and the Puget Sound Council of Governments.

It is the intent of the legislature to establish an air transportation commission, made up of persons interested in and affected by air transportation. [1990 c 298 § 39.]

47.86.020 Creation, membership. (1) The air transportation commission is created to carry out the functions of this chapter. The commission shall consist of twenty-two voting members.

(2) The governor shall appoint nineteen members to represent the following interests:

(a) Four city representatives, who shall be elected city officials, with at least one from a small city or town affected by air traffic problems and one from a large city that is a member of the regional airport system study;

(b) Four county representatives, who shall be elected county officials, with at least one from a small county affected by air traffic problems, and one from a large county that is a member of the regional airport system study;

(c) Two citizens to represent the private sector, with one from western Washington and one from eastern Washington;

(d) Three as representatives from the airline industry;

(e) Two as representatives of the ports, one of whom shall represent a port located in a county of one million population or more;

(f) The governor or a designee;

(g) A representative from the SeaTac noise mediation project;

(h) A representative from an eastern Washington metropolitan planning organization; and

(i) A representative from a western Washington metropolitan planning organization.

(3) The remaining three members shall be:

(a) The secretary of transportation or a designee;

(b) The assistant secretary of the division of aeronautics of the department of transportation; and

(c) The director of the Washington state transportation center created by agreement between the University of Washington, Washington State University, and the department of transportation.

(4) The chair of the legislative transportation committee shall appoint four members of the legislature to serve as nonvoting members of the commission.

(5) The manager of the Seattle airports division, northwest region of the federal aviation administration shall serve as a nonvoting member. [1990 c 298 § 40.]

47.86.030 Studies. The commission shall conduct studies to determine Washington's long-range air transportation policy, including an assessment of intermodal needs, and to assess the impacts of increasing air traffic upon surrounding communities, including an evaluation of noise mitigation and surface transportation impacts at

existing facilities, and the potential impact at new or expanded facilities.

The studies shall include, but are not limited to the following:

(1) The feasibility of acquiring the Stampede Pass rail line for use as a utility corridor, intermodal high speed transportation corridor or other transportation uses. The study shall include an examination of the ownership of the Stampede Pass rail line right of way and evaluate the advantages and disadvantages of preserving the Stampede Pass rail line corridor. It shall include interested public and private agencies when conducting the study. The commission shall encourage local communities and the private sector to financially participate in the study. The commission shall make a presentation of the feasibility findings to the legislative transportation committee on or before December 1, 1990.

(2) Recommendations to the legislature on future Washington state air transportation policy, including the expansion of existing and potential air carrier and reliever facilities and the siting of such new facilities, specifically taking into consideration intermodal needs. The commission shall consider the development of wayports in eastern Washington, taking into account similar developments in Japan and Germany, in order to reduce congestion resulting from rapid growth in the Puget Sound region. The commission shall coordinate its study of airport siting policy issues with the efforts of the high-speed ground transportation steering committee.

The commission shall submit findings and recommendations to the legislative transportation committee by December 1, 1994, with an interim report to be presented to the legislative transportation committee by December 1, 1992. [1991 c 231 § 7; 1990 c 298 § 41.]

High-speed ground transportation system assessment—Finding: "The legislature recognizes that major transportation corridors in this state are reaching unacceptable levels of congestion. Proposed improvements such as extension of the HOV-lane system or regional high-capacity systems, can, at best, only temporarily reduce the rate at which congestion increases. Further, such improvements do not address cross-state travel demands, whether north-south or east-west.

Therefore, the legislature finds that 1991 is an appropriate time for the legislature and the governor to direct that a comprehensive assessment be made of the feasibility of developing a high-speed ground transportation system within the state and that a plan be developed for implementation of potential alternatives.

Congress has set aside federal funds in the amount of five hundred thousand dollars for the state of Washington to carry out such an assessment, with the stipulation that the state provide an equal amount of state funds for the effort." [1991 c 231 § 1.]

High-speed ground transportation steering committee—Members: "The high-speed ground transportation steering committee is created, consisting of fifteen members, appointed jointly by the governor, the chair of the legislative transportation committee, and the chair of the transportation commission. The appointing authorities shall also designate the chair of the steering committee.

The committee must include representatives from the following:

(1) Cities and counties, including both elected officials and planners, and if possible, representatives of regional transportation planning organizations;

(2) Public transportation systems;

(3) The United States department of transportation;

(4) Public ports; and

(5) The private sector, including:

(a) The financial community;

(b) The engineering and construction community;

- (c) Railroad companies;
- (d) Environmental interests; and
- (e) The legal profession.

The secretary of the state department of transportation, or the secretary's designee, shall also be a member.

Members of the steering committee shall receive no compensation for their service, but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060." [1991 c 231 § 2.]

Liaison members: "The following persons shall serve as voting liaison members to the steering committee:

- (1) The governor or a designee;
- (2) Four legislators, one from each caucus of each house, appointed by the chair of the legislative transportation committee; and
- (3) The chair of the transportation commission.

In addition to those persons, the governor shall attempt to obtain appropriate nonvoting liaison representation to the steering committee from the state of Oregon and the province of British Columbia." [1991 c 231 § 3.]

Issues addressed: "The steering committee shall initially address the feasibility of a high-speed ground transportation system within this state, including such issues as:

- (1) When such a system would be economically feasible;
- (2) The forecasted demand, assessing whether the focus should be on passenger travel or freight or both;
- (3) Identification of the corridors to be analyzed;
- (4) Land use and economic development implications;
- (5) Environmental considerations;
- (6) The compatibility of such a system with regional transportation plans along proposed corridors;
- (7) Impacts on and interfaces with other travel modes;
- (8) Technological options for high-speed ground transportation, both foreign and domestic;
- (9) Required specifications for speed, safety, access, and frequency;
- (10) Identification of existing highway or railroad rights of way that are suitable for high-speed travel;
- (11) Identification of additional rights of way that may be needed and the process for acquiring those rights of way;
- (12) The recommended institutional arrangement for carrying out detailed planning for such a system, for constructing it, and for operating it;
- (13) Whether financing of construction should be public or private or some combination of both;
- (14) Whether financing of operations should be public or private or some combination of both;
- (15) If public sector financing for any portion of capital or operation costs is deemed necessary, which existing or new tax sources would be appropriate.

The steering committee shall coordinate its work with that of the air transportation commission established in "RCW 47.86.030." [1991 c 231 § 4.]

***Reviser's note:** The air transportation commission is created in RCW 47.86.020.

Office of high-speed ground transportation: "In order to provide technical and administrative support to the steering committee, the office of high-speed ground transportation is created within the department of transportation. That office may contract with consultants at the direction of the steering committee and shall provide other support functions as requested by the committee." [1991 c 231 § 5.]

Reports: "The steering committee shall present a final report to the governor, the legislature, and the transportation commission by October 15, 1992. It shall present interim progress reports as appropriate. The final report must include findings of the steering committee, a recommended plan for implementation, and proposed legislation to implement the next phase of a high-speed ground transportation program." [1991 c 231 § 6.]

Appropriation: "The sum of five hundred thousand dollars, or as much thereof as may be necessary, is appropriated from the transportation fund to the department of transportation program T, for the biennium ending June 30, 1993, to carry out the purposes of this act. The appropriation shall be expended in accordance with the work plan developed by the high-speed ground transportation steering committee created in section 2, chapter 231, Laws of 1991." [1991 c 231 § 8.]

Expiration: "Sections 1 through 6, chapter 231, Laws of 1991 shall expire December 31, 1992." [1991 c 231 § 9.]

47.86.040 Consultants, funding. The commission may contract with consultants to assist in any of the assigned studies. The commission shall seek federal funding in consultation with the department of transportation. Any federal funds received shall reduce the amount of state funds appropriated in *section 13, chapter 298, Laws of 1990. [1990 c 298 § 42.]

***Reviser's note:** 1990 c 298 § 13 was vetoed by the governor.

47.86.050 Operation, dissolution of commission. The commission shall select a chair from among its membership and shall adopt rules related to its powers and duties under this chapter. Members of the commission shall be reimbursed for travel expenses as provided in RCW 43.03.050, 43.03.060, and 44.04.120, as appropriate. Members appointed by the governor shall be compensated in accordance with RCW 43.03.220. The commission has all powers necessary to carry out its duties as prescribed by this chapter. The commission shall be dissolved on June 30, 1995. [1990 c 298 § 43.]

47.86.060 Staff, budget. The commission may employ staff as necessary to carry out this chapter. The department of transportation, the legislative transportation committee, and the Washington state transportation center may provide additional staff support for the commission. The legislative transportation committee must approve the commission's budget plan before the commission may spend funds. [1990 c 298 § 44.]

47.86.900 Expiration. This chapter expires June 30, 1995. [1990 c 298 § 45.]

47.86.901 Severability—1990 c 298. 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. [1990 c 298 § 47.]

Title 48 INSURANCE

Chapters

- 48.01** Initial provisions.
- 48.04** Hearings and appeals.
- 48.05** Insurers—General requirements.
- 48.10** Reciprocal insurers.
- 48.15** Unauthorized insurers.
- 48.17** Agents, brokers, solicitors, and adjusters.
- 48.18** The insurance contract.
- 48.20** Disability insurance.
- 48.21** Group and blanket disability insurance.
- 48.29** Title insurers.
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- 48.32A** Washington Life and Disability Insurance Guaranty Association Act.
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- 48.46 Health maintenance organizations.
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- 48.66 Medicare Supplemental Health Insurance Act.
- 48.80 Health Care False Claim Act.
- 48.96 Motor vehicle service contracts.

**Chapter 48.01
INITIAL PROVISIONS**

Sections
48.01.050 "Insurer" defined.

48.01.050 "Insurer" defined. "Insurer" as used in this code includes every person engaged in the business of making contracts of insurance, other than a fraternal benefit society. A reciprocal or interinsurance exchange is an "insurer" as used in this code. Two or more hospitals, as defined in *RCW 70.39.020(3), which join and organize as a mutual corporation pursuant to chapter 24.06 RCW for the purpose of insuring or self-insuring against liability claims, including medical liability, through a contributing trust fund shall not be deemed an "insurer" under this code. Two or more local governmental entities, as defined in **RCW 48.62.020, which pursuant to **RCW 48.62.040, 48.62.035, or any other provision of law join together and organize to form an organization for the purpose of jointly self-insuring or self-funding shall not be deemed an "insurer" under this code. Two or more persons engaged in the business of commercial fishing who enter into an arrangement with other such persons for the pooling of funds to pay claims or losses arising out of loss or damage to a vessel or machinery used in the business of commercial fishing and owned by a member of the pool shall not be deemed an "insurer" under this code. [1990 c 130 § 1; 1985 c 277 § 9; 1979 ex.s. c 256 § 13; 1975-'76 2nd ex.s. c 13 § 1; 1947 c 79 § .01.05; Rem. Supp. 1947 § 45.01.05.]

Reviser's note: *(1) RCW 70.39.020 was repealed by 1982 c 223 § 10, effective June 30, 1990.

** (2) RCW 48.62.020, 48.62.040, and 48.62.035 were repealed by 1991 1st sp.s. c 30 § 33, effective January 1, 1992.

Retrospective application—1985 c 277: "This act applies retrospectively to group self-funded plans formed on or after January 1, 1983." [1985 c 277 § 10.] For codification of "this act" [1985 c 277], see Codification Tables, Volume 0.

"Domestic," "foreign," "alien" insurers defined: RCW 48.05.010.

Merger, rehabilitation, liquidation situations—"Insurer" defined: RCW 48.31.020, 48.31.110.

"Reciprocal insurance, insurer" defined: RCW 48.10.010, 48.10.020.

**Chapter 48.04
HEARINGS AND APPEALS**

Sections
48.04.010 Hearings—Waiver.

48.04.010 Hearings—Waiver. (1) The commissioner may hold a hearing for any purpose within the scope of this code as he or she may deem necessary. The commissioner shall hold a hearing:

- (a) If required by any provision of this code; or
- (b) Upon written demand for a hearing made by any person aggrieved by any act, threatened act, or failure of the commissioner to act, if such failure is deemed an act under any provision of this code, or by any report, promulgation, or order of the commissioner other than an order on a hearing of which such person was given actual notice or at which such person appeared as a party, or order pursuant to the order on such hearing.

(2) Any such demand for a hearing shall specify in what respects such person is so aggrieved and the grounds to be relied upon as basis for the relief to be demanded at the hearing.

(3) Unless a person aggrieved by a written order of the commissioner demands a hearing thereon within ninety days after receiving notice of such order, or in the case of a licensee under Title 48 RCW within ninety days after the commissioner has mailed the order to the licensee at the most recent address shown in the commissioner's licensing records for the licensee, the right to such hearing shall conclusively be deemed to have been waived.

(4) If a hearing is demanded by a licensee whose license has been temporarily suspended pursuant to RCW 48.17.540, the commissioner shall hold such hearing demanded within thirty days after receipt of the demand or within thirty days of the effective date of a temporary license suspension issued after such demand, unless postponed by mutual consent. [1990 1st ex.s. c 3 § 1; 1988 c 248 § 2; 1967 c 237 § 16; 1963 c 195 § 2; 1947 c 79 § .04.01; Rem. Supp. 1947 § 45.04.01.]

**Chapter 48.05
INSURERS—GENERAL REQUIREMENTS**

Sections
48.05.340 Capital and surplus requirements.

48.05.340 Capital and surplus requirements. (1) Subject to RCW 48.05.350 and 48.05.360 to qualify for authority to transact any one kind of insurance as defined in chapter 48.11 RCW or combination of kinds of insurance as shown below, a foreign or alien insurer, whether stock or mutual, or a domestic insurer hereafter formed shall possess and thereafter maintain unimpaired paid-in capital stock, if a stock insurer, or unimpaired surplus if a mutual insurer, and shall possess when first so authorized additional funds in surplus as follows:

Kind or kinds of insurance	Paid-in capital stock or basic surplus	Additional surplus
Life	\$2,000,000	\$2,000,000
Disability	2,000,000	2,000,000
Life and disability	2,400,000	2,400,000
Property	2,000,000	2,000,000
Marine & transportation	2,000,000	2,000,000
General casualty	2,400,000	2,400,000
Vehicle	2,000,000	2,000,000
Surety	2,000,000	2,000,000

Kind or kinds of insurance	Paid-in capital stock or basic surplus	Additional surplus
Any two of the following kinds of insurance: Property, marine & transportation, general casualty, vehicle, surety, disability	3,000,000	3,000,000
Multiple lines (all insurances except life and title insurance)	3,000,000	3,000,000
Title (in accordance with the provisions of chapter 48.29 RCW)		

(2) Capital and surplus requirements are based upon all the kinds of insurance transacted by the insurer wherever it may operate or propose to operate, whether or not only a portion of such kinds are to be transacted in this state.

(3) An insurer holding a certificate of authority to transact insurance in this state immediately prior to July 1, 1991, may continue to be authorized to transact the same kinds of insurance as long as it is otherwise qualified for such authority and thereafter maintains unimpaired the amount of paid-in capital stock, if a stock insurer, or basic surplus, if a mutual or reciprocal insurer, and special surplus as required of it under laws in force immediately prior to such effective date; and any proposed domestic insurer which is in process of formation or financing under a solicitation permit which is outstanding immediately prior to July 1, 1991, shall, if otherwise qualified therefor, be authorized to transact any kind or kinds of insurance upon the basis of the capital and surplus requirements of such an insurer under the laws in force immediately prior to such effective date. The requirements for paid-in capital stock, basic surplus, and special surplus that were in effect immediately before July 1, 1991, apply to any completed application for a certificate of authority from a foreign or alien insurer that is on file with the commissioner on July 1, 1991. [1991 1st sp.s. c 5 § 1; 1982 c 181 § 3; 1980 c 135 § 1; 1967 c 150 § 5; 1963 c 195 § 7.]

Effective date—1991 1st sp.s. c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 1st sp.s. c 5 § 3.]

Severability—1982 c 181: See note following RCW 48.03.010.

**Chapter 48.10
RECIPROCAL INSURERS**

Sections
48.10.055 Real property—Attorney's duty.

48.10.055 Real property—Attorney's duty. A reciprocal insurer may purchase, sell, mortgage, encumber, lease, or otherwise affect the title to real property for the purposes and objects of the reciprocal insurer. All deeds, notes, mortgages, or other documents relating to the real

property may be executed in the name of the reciprocal insurer by its attorney. [1991 c 266 § 1.]

**Chapter 48.15
UNAUTHORIZED INSURERS**

Sections
48.15.090 Solvent insurer required.

48.15.090 Solvent insurer required. (1) A surplus line broker shall not knowingly place surplus line insurance with insurers unsound financially. The surplus line broker shall ascertain the financial condition of the unauthorized insurer, and maintain written evidence thereof, before placing insurance therewith. The surplus line broker shall not so insure with:

(a) Any foreign insurer having less than six million dollars of capital and surplus or substantially equivalent capital funds, of which not less than one million five hundred thousand dollars is capital; or

(b) Any alien insurer having less than six million dollars of capital and surplus or substantially equivalent capital funds. By January 1, 1992, this requirement shall be increased to twelve million five hundred thousand dollars. By January 1, 1993, this requirement shall be further increased to fifteen million dollars. Such alien insurers must have in force in the United States an irrevocable trust account, in a qualified United States financial institution, on behalf of United States policyholders of not less than two million five hundred thousand dollars and consisting of cash, securities, letters of credit, or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers authorized to write like kinds of insurance in this state. There must be on file with the commissioner a copy of the trust, certified by the trustee, evidencing a subsisting trust deposit having an expiration date which at no time shall be less than five years after the date of creation of the trust. Such trust fund shall be included in the calculation of the insurer's capital and surplus or its equivalents; or

(c) Any unincorporated group of individual insurers maintaining a trust fund of less than fifty million dollars as security to the full amount thereof for all policyholders in the United States of each member of the group, and such trust shall likewise comply with the terms and conditions established in (b) of this subsection for an alien insurer; or

(d) Any insurance exchange created by the laws of an individual state, maintaining capital and surplus, or substantially equivalent capital funds of less than fifty million dollars in the aggregate. For insurance exchanges which maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus, or the substantial equivalent thereof, of not less than six million dollars. In the event the insurance exchange does not maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall

meet the minimum capital and surplus requirements of (a) of this subsection.

(2) The commissioner may, by rule:

(a) Increase the financial requirements under subsection (1) of this section by not more than one million dollars in any twelve-month period, but in no case may the requirements exceed fifteen million dollars; or

(b) Prescribe the terms under which the foregoing financial requirements may be waived in circumstances where insurance cannot be otherwise procured on risks located in this state.

(3) For any violation of this section the surplus line broker may be fined not less than one hundred dollars or more than five thousand dollars, and in addition to or in lieu thereof the surplus line broker's license may be revoked, suspended, or nonrenewed. [1991 1st sp.s. c 5 § 2; 1980 c 102 § 4; 1975 1st ex.s. c 266 § 6; 1969 ex.s. c 241 § 10; 1955 c 303 § 5; 1947 c 79 § .15.09; Rem. Supp. 1947 § 45.15.09.]

Effective date—1991 1st sp.s. c 5: See note following RCW 48.05.340.

Severability—1975 1st ex.s. c 266: See note following RCW 31.08.175.

Chapter 48.17

AGENTS, BROKERS, SOLICITORS, AND ADJUSTERS

Sections

48.17.110	Examination of applicants.
48.17.160	Appointment of agents—Revocation—Expiration—Renewal.
48.17.180	Licenses to firms and corporations.
48.17.440	Repealed.
48.17.450	Place of business.
48.17.540	Procedure to suspend, revoke, or refuse—Effect of conviction of felony.
48.17.590	Repealed.

Independent agency contract: Chapter 48.18 RCW.

48.17.110 Examination of applicants. (1) Each applicant for license as an agent, broker, solicitor, or adjuster shall, prior to the issuance of any such license, personally take and pass to the satisfaction of the examining authority, an examination given as a test of that person's qualifications and competence, but this requirement shall not apply to:

(a) Applicants for limited licenses under RCW 48.17.190, at the discretion of the commissioner.

(b) Applicants who within the two year period next preceding date of application have been licensed as a resident in this state under a license requiring qualifications similar to qualifications required by the license applied for or who have successfully completed a course of study recognized as a mark of distinction by the insurance industry and who are deemed by the commissioner to be fully qualified and competent.

(c) Applicants for license as a nonresident agent or as a nonresident broker or as a nonresident adjuster who are duly licensed in their state of residence and who are deemed by the commissioner to be fully qualified and competent for a similar license in this state.

(d) Applicants for an agent's or solicitor's license covering the same kinds of insurance as an agent's or solicitor's license then held by them.

(e) Applicants for an adjuster's license who for a period of one year, a portion of which was in the year next preceding the date of application, have been a full time salaried employee of an insurer or of a general agent to adjust, investigate, or report claims arising under insurance contracts.

(2) Any person licensed as an insurance broker by this state prior to June 8, 1967, who is otherwise qualified to be a licensed insurance broker, shall be entitled to renew that person's broker's license by payment of the applicable fee for such of the broker's licenses authorized by RCW 48.17.240, as that person shall elect, without taking any additional examination, except as provided in subsection (3).

(3) The commissioner may at any time require any licensed agent, broker, solicitor, or adjuster to take and successfully pass an examination testing the licensee's competence and qualifications as a condition to the continuance or renewal of a license, if the licensee has been guilty of violation of this code, or has so conducted affairs under an insurance license as to cause the commissioner reasonably to desire further evidence of the licensee's qualifications. [1990 1st ex.s. c 3 § 2; 1977 ex.s. c 182 § 3; 1967 c 150 § 16; 1965 ex.s. c 70 § 19; 1963 c 195 § 17; 1955 c 303 § 10; 1949 c 190 § 23; 1947 c 79 § .17.11; Rem. Supp. 1949 § 45.17.11.]

48.17.160 Appointment of agents—Revocation—Expiration—Renewal. (1) Each insurer on appointing an agent in this state shall file written notice thereof with the commissioner on forms as prescribed and furnished by the commissioner, and shall pay the filing fee therefor as provided in RCW 48.14.010. The commissioner shall return the appointment of agent form to the insurer for distribution to the agent. The commissioner may adopt regulations establishing alternative appointment procedures for individuals within licensed firms, corporations, or sole proprietorships who are empowered to exercise the authority conferred by the firm, corporate, or sole proprietorship license.

(2) Each appointment shall be effective until the agent's license expires or is revoked, the appointment has expired, or written notice of termination of the appointment is filed with the commissioner, whichever occurs first.

(3) When the appointment is revoked by the insurer, written notice of such revocation shall be given to the agent and a copy of the notice of revocation shall be mailed to the commissioner.

(4) Revocation of an appointment by the insurer shall be deemed to be effective as of the date designated in the notice as being the effective date if the notice is actually received by the agent prior to such designated date; otherwise, as of the earlier of the following dates:

(a) The date such notice of revocation was received by the agent.

(b) The date such notice, if mailed to the agent at his last address of record with the insurer, in due course should have been received by the agent.

(5) Appointments shall be for one year and shall expire if not timely renewed. Each insurer shall annually pay the renewal fee set forth for each agent holding an appointment on the annual renewal date assigned the agents of the insurer by the commissioner. The commissioner, by rule, shall determine renewal dates. If a staggered system is used, fees shall be prorated in the conversion to a staggered system. [1990 1st ex.s. c 3 § 3; 1979 ex.s. c 269 § 2; 1967 c 150 § 20; 1959 c 225 § 6; 1955 c 303 § 13; 1947 c 79 § .17.16; Rem. Supp. 1947 § 45.17.16.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

48.17.180 Licenses to firms and corporations. (1) A firm or corporation may be licensed as an agent, adjuster, or broker if each individual empowered to exercise the authority conferred by the corporate or firm license is also licensed. Exercise or attempted exercise of the powers of the firm or corporation by an unlicensed person, with the knowledge or consent of the firm or corporation, shall constitute cause for the revocation or suspension of the license.

(2) Licenses shall be issued in a trade name only upon proof satisfactory to the commissioner that the trade name has been lawfully registered.

(3) For the purpose of this section, a firm shall include a duly licensed individual acting as a sole proprietorship having associated licensees authorized to act on the proprietor's behalf in the proprietor's business or trade name. [1990 1st ex.s. c 3 § 4; 1979 ex.s. c 269 § 4; 1947 c 79 § .17.18; Rem. Supp. 1947 § 45.17.18.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

Title insurance agents, separate licenses for individuals not required: RCW 48.29.170.

48.17.440 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

48.17.450 Place of business. (1) Every licensed agent, broker, and adjuster, other than an agent licensed for life or disability insurances only, shall have and maintain in this state, or, if a nonresident agent or nonresident broker, in this state or in the state of the licensee's domicile, a place of business accessible to the public. Such place of business shall be that wherein the agent or broker principally conducts transactions under that person's licenses. The address of the licensee's place of business shall appear on all of that person's licenses, and the licensee shall promptly notify the commissioner of any change thereof. A licensee maintaining more than one place of business in this state shall obtain a duplicate license or licenses for each additional such place, and shall pay the full fee therefor.

(2) Any notice, order, or written communication from the commissioner to a person licensed under this chapter

which directly affects the person's license shall be sent by mail to the person's last residential address, if an individual, and to the person's last business address, if licensed as a firm or corporation, as such address is shown in the commissioner's licensing records. A licensee shall promptly notify the commissioner of any change of residential or business address. [1990 1st ex.s. c 3 § 5; 1988 c 248 § 11; 1953 c 197 § 6; 1947 c 79 § .17.45; Rem. Supp. 1947 § 45.17.45.]

48.17.540 Procedure to suspend, revoke, or refuse—Effect of conviction of felony. (1) The commissioner may revoke or refuse to renew any license issued under this chapter, or any surplus line broker's license, immediately and without hearing, upon sentencing of the licensee for conviction of a felony by final judgment of any court of competent jurisdiction, if the facts giving rise to such conviction demonstrate the licensee to be untrustworthy to maintain any such license.

(2) The commissioner may suspend, revoke, or refuse to renew any such license:

(a) By an order served by mail or personal service upon the licensee not less than fifteen days prior to the effective date thereof, subject to the right of the licensee to have a hearing as provided in RCW 48.04.010; or

(b) By an order on hearing made as provided in chapter 34.05 RCW, the Administrative Procedure Act, effective not less than ten days after the date of the service of the order, subject to the right of the licensee to appeal to the superior court.

(3) The commissioner may temporarily suspend such license by an order served by mail or by personal service upon the licensee not less than three days prior to the effective date thereof, provided the order contains a notice of revocation and includes a finding that the public safety or welfare imperatively requires emergency action. Such suspension shall continue only until proceedings for revocation are concluded. The commissioner also may temporarily suspend such license in cases where proceedings for revocation are pending if he or she finds that the public safety or welfare imperatively requires emergency action.

(4) Service by mail under this section shall mean posting in the United States mail, addressed to the licensee at the most recent address shown in the commissioner's licensing records for the licensee. Service by mail is complete upon deposit in the United States mail. [1990 1st ex.s. c 3 § 6; 1989 c 175 § 113; 1988 c 248 § 14; 1982 c 181 § 8; 1973 1st ex.s. c 107 § 2; 1967 c 150 § 24; 1947 c 79 § .17.54; Rem. Supp. 1947 § 45.17.54.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1982 c 181: See note following RCW 48.03.010.

Severability—1973 1st ex.s. c 107: See note following RCW 48.17.330.

48.17.590 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 48.18
THE INSURANCE CONTRACT

Sections

48.18.285 Termination of agency contract—Effect on insured.

48.18.285 Termination of agency contract—Effect on insured. (1) No insurer authorized to do business in this state may cancel or refuse to renew any policy because that insurer's contract with the independent agent through whom such policy is written has been terminated by the insurer, the agent, or by mutual agreement.

(2) If an insurer intends to terminate a written agency contract with an independent agent, the insurer shall give the agent not less than one hundred twenty days' advance written notice of the intent, unless the termination is based upon the agent's abandonment of the agency, the agent's gross and willful misconduct, the agent's loss of license by order of the insurance commissioner, the agent's sale of, or material change of ownership in, the agency, the agent's fraud or material misrepresentation relative to the business of insurance, or the agent's default in payments due the insurer under the terms of the agreement. During the notice period the insurer shall not amend the existing contract without the consent of the agent.

(a) Unless the agency contract provides otherwise, during the one hundred twenty day notice period the independent agent shall not write or bind any new business on behalf of the terminating insurer without specific written approval. However, routine adjustments by insureds are permitted. The terminating insurer shall permit renewal of all its policies in the agent's book of business for a period of one year following the effective date of the termination, to the extent the policies meet the insurer's underwriting standards and the insurer has no other reason for nonrenewal. The rate of commission for any policies renewed under this provision shall be the same as the agent would have received had the agency agreement not been terminated.

(b) An independent agent whose agency contract has been terminated shall have a reasonable opportunity to transfer affected policies to other insurers with which the agent has an appointment: PROVIDED, HOWEVER, That prior to the conclusion of the one-year renewal period following the effective date of the termination, an insurer without a reason for not renewing an insured's policy and which has not received notification of the placement of such policy with another insurer shall provide its insured with appropriate written notice of an offer to continue the policy. In such cases, except where the terminated agent has placed the policy with another agent of the insurer, the insurer shall, where practical, assign the policy to an appointed agent located reasonably near the insured willing to accept the assignment.

(c) An insurer is not required to continue the appointment of a terminated independent agent during or after the one year renewal period. However, an agent whose contract has been terminated by the insurer remains an agent of the terminating insurer as to actions

associated with the policies subject to this section just as if he or she were appointed by the insurer as its agent.

(3) In the absence of receipt of notice from the insured that coverage will not be continued with the existing insurer, an insurer whose agency contract has been terminated by an independent agent, or by the mutual agreement of the insurer and the agent, that elects to renew or lacks a reason not to renew, shall give the renewal notice required by chapter 48.18 RCW to affected insureds, and continue renewed coverage in accordance with the methods specified in subsection (2)(b) of this section. Agents affected by this subsection may provide the notice to an insurer that an insured does not intend to continue existing coverage with the insurer, after receiving written authority to do so from an insured.

(4) For purposes of this section an "independent agent" is a licensed insurance agent representing an insurer on an independent contractor basis and not as an employee. This term includes only those agents not obligated by contract to place insurance accounts with a particular insurer or group of insurers.

(5) This section does not apply to (a) agents or policies of an insurer or group of insurers if the business is not owned by the agent and the termination of any such contractual agreement does not result in the cancellation or nonrenewal of any policies of insurance; (b) general agents, to the extent that they are acting in that capacity; (c) life, disability, surety, ocean marine and foreign trade, and title insurance policies; (d) situations where the termination of the agency contract results from the insolvency or liquidation of the terminating insurer.

(6) No insurer may terminate its agency contract with an appointed agent unless it complies with this section.

(7) Nothing contained in this section excuses an insurer from giving cancellation and renewal notices that may be required by chapter 48.18 RCW. [1990 c 121 § 1.]

Reviser's note: 1990 c 121 directed that this section be added to chapter 48.17 RCW. The placement appears inappropriate and the section has been codified as part of chapter 48.18 RCW.

Chapter 48.20
DISABILITY INSURANCE

Sections

48.20.530 Nonresident pharmacies.

48.20.530 Nonresident pharmacies. For the purposes of this chapter, a nonresident pharmacy is defined as any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an enrolled participant or his/her representative, controlled substances, legend drugs, or devices into this state.

After October 1, 1991, an insurer providing coverage of prescription drugs from nonresident pharmacies may only provide coverage from licensed nonresident pharmacies. The insurers shall obtain proof of current licensure in conformity with this section and RCW 18.64.350

through 18.64.400 from the nonresident pharmacy and keep that proof of licensure on file.

The department of health may request from the insurer the proof of current licensure for all nonresident pharmacies through which the insurer is providing coverage for prescription drugs to residents of the state of Washington. This information, which may constitute a full or partial customer list, shall be confidential and exempt from public disclosure, and from the requirements of chapter 42.17 RCW. The board or the department shall not be restricted in the disclosure of the name of a nonresident pharmacy that is or has been licensed under RCW 18.64.360 or 18.64.370 or of the identity of a nonresident pharmacy disciplined under RCW 18.64.350 through 18.64.400. [1991 c 87 § 7.]

Effective date—1991 c 87: See note following RCW 18.64.350.

Chapter 48.21

GROUP AND BLANKET DISABILITY INSURANCE

Sections

48.21.045	Basic group disability insurance policy—Fewer than twenty-five employees.
48.21.180	Chemical dependency benefits—Contracts issued or renewed after January 1, 1988.
48.21.330	Nonresident pharmacies.

48.21.045 Basic group disability insurance policy—Fewer than twenty-five employees. A basic group disability insurance policy may be offered to employers of fewer than twenty-five employees. Such a basic group disability insurance policy shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.21.130, 48.21.140, 48.21.141, 48.21.142, 48.21.144, 48.21.146, 48.21.160 through 48.21.197, 48.21.200, 48.21.220, 48.21.225, 48.21.230, 48.21.235, 48.21.240, 48.21.244, 48.21.250, 48.21.300, 48.21.310, or 48.21.320.

Nothing in this section shall prohibit an insurer from offering, or a purchaser from seeking, benefits in excess of the basic coverage authorized herein. All forms, policies, and contracts shall be submitted for approval to the commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

The policy authorized by this section shall not supplant or supersede any existing policy for the benefit of employees in this state. Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein. [1990 c 187 § 2.]

Finding—Intent—1990 c 187: "The legislature finds that the rising cost of comprehensive group health coverage is exceeding the affordability of many small businesses and their employees. The legislature further finds that certain public policies have an adverse impact on the cost of such coverage. It is therefore the intent of the legislature to reduce costs by authorizing the development of basic hospital and medical coverage for small groups." [1990 c 187 § 1.]

Severability—1990 c 187: "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." [1990 c 187 § 6.]

48.21.180 Chemical dependency benefits—Contracts issued or renewed after January 1, 1988. Each group disability insurance contract which is delivered or issued for delivery or renewed, on or after January 1, 1988, and which insures for hospital or medical care shall contain provisions providing benefits for the treatment of chemical dependency rendered to the insured by a provider which is an "approved treatment facility or program" under *RCW 70.96A.020(3). [1990 1st ex.s. c 3 § 7; 1987 c 458 § 14; 1974 ex.s. c 119 § 3.]

*Reviser's note: RCW 70.96A.020(3) defines "approved treatment program."

Effective date—Severability—1987 c 458: See notes following RCW 48.21.160.

48.21.330 Nonresident pharmacies. For the purposes of this chapter, a nonresident pharmacy is defined as any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an enrolled participant or his/her representative, controlled substances, legend drugs, or devices into this state.

After October 1, 1991, an insurer providing coverage of prescription drugs from nonresident pharmacies may only provide coverage from licensed nonresident pharmacies. The insurers shall obtain proof of current licensure in conformity with this section and RCW 18.64.350 through 18.64.400 from the nonresident pharmacy and keep that proof of licensure on file.

The department may request from the insurer the proof of current licensure for all nonresident pharmacies through which the insurer is providing coverage for prescription drugs for residents of the state of Washington. This information, which may constitute a full or partial customer list, shall be confidential and exempt from public disclosure, and from the requirements of chapter 42.17 RCW. The board or the department shall not be restricted in the disclosure of the name of a nonresident pharmacy that is or has been licensed under RCW 18.64.360 or 18.64.370 or of the identity of a nonresident pharmacy disciplined under RCW 18.64.350 through 18.64.400. [1991 c 87 § 8.]

Effective date—1991 c 87: See note following RCW 18.64.350.

Chapter 48.29

TITLE INSURERS

Sections

48.29.020	Qualifications—Guaranty fund deposit.
48.29.040	May do business in two or more counties—Restrictions.

48.29.020 Qualifications—Guaranty fund deposit. A title insurer shall not be entitled to have a certificate of authority unless it otherwise qualifies therefor, nor unless:

- (1) It is a stock corporation.

(2) It owns or leases and maintains a complete set of tract indexes of the county in which its principal office within this state is located.

(3) It deposits and keeps on deposit with the commissioner a guaranty fund in amount as set forth in RCW 48.29.030 and comprised of cash or public obligations as specified in RCW 48.13.040. [1990 c 76 § 1; 1955 c 86 § 12; 1947 c 79 § .29.02; Rem. Supp. 1947 § 45.29.02.]

Effective date—Supervision of transfers—1955 c 86: See notes following RCW 48.05.080.

48.29.040 May do business in two or more counties—Restrictions. (1) Subject to the deposit requirements of RCW 48.29.030, a title insurer having its principal offices in one county may be authorized to transact business in only such additional counties as to which it owns or leases and maintains, or has a duly authorized agent that owns or leases and maintains, a complete set of tract indexes.

(2) A title insurer not authorized to transact business in a certain county may purchase a title policy on property located therein from another title insurer which is so authorized in that county. The first title insurer may thereafter issue its own policy of title insurance to the owner of such property. The first title insurer may combine the insurance on the title of such property in a single policy which also insures the title of one or more other pieces of property. The first title insurer must pay the full premium based on filed rates for the policy, and must charge the precise same amount to its own customer for the insurance as to the title of such property. A title insurer using the authority granted by this subsection in a transaction must so notify its customer. [1990 c 76 § 2; 1957 c 193 § 17; 1947 c 79 § .29.04; Rem. Supp. 1947 § 45.29.04.]

Chapter 48.30

UNFAIR PRACTICES AND FRAUDS

Sections

48.30.140	Rebating.
48.30.150	Illegal inducements.
48.30.210	Misrepresentation in application for insurance.
48.30.230	False claims or proof—Penalty.
48.30.260	Right of debtor or borrower to select agent, broker, insurer.

48.30.140 Rebating. (1) Except to the extent provided for in an applicable filing with the commissioner then in effect, no insurer, general agent, agent, broker, or solicitor shall, as an inducement to insurance, or after insurance has been effected, directly or indirectly, offer, promise, allow, give, set off, or pay to the insured or to any employee of the insured, any rebate, discount, abatement, or reduction of premium or any part thereof named in any insurance contract, or any commission thereon, or earnings, profits, dividends, or other benefit, or any other valuable consideration or inducement whatsoever which is not expressly provided for in the policy.

(2) Subsection (1) of this section shall not apply as to commissions paid to a licensed agent, general agent,

broker, or solicitor for insurance placed on that person's own property or risks.

(3) This section shall not apply to the allowance by any marine insurer, or marine insurance agent, general agent, broker, or solicitor, to any insured, in connection with marine insurance, of such discount as is sanctioned by custom among marine insurers as being additional to the agent's or broker's commission.

(4) This section shall not apply to advertising or promotional programs conducted by insurers, agents, or brokers whereby prizes, goods, wares, or merchandise, not exceeding twenty-five dollars in value per person in the aggregate in any twelve month period, are given to all insureds or prospective insureds under similar qualifying circumstances. [1990 1st ex.s. c 3 § 8; 1985 c 264 § 14; 1975-'76 2nd ex.s. c 119 § 3; 1947 c 79 § .30.14; Rem. Supp. 1947 § 45.30.14.]

48.30.150 Illegal inducements. No insurer, general agent, agent, broker, solicitor, or other person shall, as an inducement to insurance, or in connection with any insurance transaction, provide in any policy for, or offer, or sell, buy, or offer or promise to buy or give, or promise, or allow to, or on behalf of, the insured or prospective insured in any manner whatsoever:

(1) Any shares of stock or other securities issued or at any time to be issued on any interest therein or rights thereto; or

(2) Any special advisory board contract, or other contract, agreement, or understanding of any kind, offering, providing for, or promising any profits or special returns or special dividends; or

(3) Any prizes, goods, wares, or merchandise of an aggregate value in excess of twenty-five dollars.

This section shall not be deemed to prohibit the sale or purchase of securities as a condition to or in connection with surety insurance insuring the performance of an obligation as part of a plan of financing found by the commissioner to be designed and operated in good faith primarily for the purpose of such financing, nor shall it be deemed to prohibit the sale of redeemable securities of a registered investment company in the same transaction in which life insurance is sold. [1990 1st ex.s. c 3 § 9; 1975-'76 2nd ex.s. c 119 § 4; 1957 c 193 § 18; 1947 c 79 § .30.15; Rem. Supp. 1947 § 45.30.15.]

48.30.210 Misrepresentation in application for insurance. Any agent, solicitor, broker, examining physician or other person who makes a false or fraudulent statement or representation in or relative to an application for insurance in an insurer transacting insurance under the provisions of this code, shall be guilty of a misdemeanor, and the license of any such agent, solicitor, or broker who makes such a statement or representation may be revoked. [1990 1st ex.s. c 3 § 10; 1947 c 79 § .30.21; Rem. Supp. 1947 § 45.30.21.]

48.30.230 False claims or proof—Penalty. Any person, who, knowing it to be such:

(1) Presents, or causes to be presented, a false or fraudulent claim, or any proof in support of such a

claim, for the payment of a loss under a contract of insurance; or

(2) Prepares, makes, or subscribes any false or fraudulent account, certificate, affidavit, or proof of loss, or other document or writing, with intent that it be presented or used in support of such a claim, is guilty of a gross misdemeanor, or if such claim is in excess of one thousand five hundred dollars, of a class C felony. [1990 1st ex.s. c 3 § 11; 1947 c 79 § .30.23; Rem. Supp. 1947 § 45.30.23.]

48.30.260 Right of debtor or borrower to select agent, broker, insurer. (1) Every debtor or borrower, when property insurance of any kind is required in connection with the debt or loan, shall have reasonable opportunity and choice in the selection of the agent, broker, and insurer through whom such insurance is to be placed; but only if the insurance is properly provided for the protection of the creditor or lender, whether by policy or binder, not later than at commencement of risk as to such property as respects such creditor or lender, and in the case of renewal of insurance, only if the renewal policy, or a proper binder therefor containing a brief description of the coverage bound and the identity of the insurer in which the coverage is bound, is delivered to the creditor or lender not later than thirty days prior to the renewal date.

(2) Every person who lends money or extends credit and who solicits insurance on real and personal property must explain to the borrower in prominently displayed writing that the insurance related to such loan or credit extension may be purchased from an insurer or agent of the borrower's choice, subject only to the lender's right to reject a given insurer or agent as provided in subsection (3)(b) of this section.

(3) No person who lends money or extends credit may:

(a) Solicit insurance for the protection of property, after a person indicates interest in securing a loan or credit extension, until such person has received a commitment from the lender as to a loan or credit extension;

(b) Unreasonably reject a contract of insurance furnished by the borrower for the protection of the property securing the credit or lien. A rejection shall not be deemed unreasonable if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for rejection of an insurance contract because the contract contains coverage in addition to that required in the credit transaction;

(c) Require that any borrower, mortgagor, purchaser, insurer, broker, or agent pay a separate charge, in connection with the handling of any contract of insurance required as security for a loan, or pay a separate charge to substitute the insurance policy of one insurer for that of another. This subsection does not include the interest which may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document;

(d) Use or disclose, without the prior written consent of the borrower, mortgagor, or purchaser taken at a time other than the making of the loan or extension of credit, information relative to a contract of insurance which is required by the credit transaction, for the purpose of replacing such insurance;

(e) Require any procedures or conditions of duly licensed agents, brokers, or insurers not customarily required of those agents, brokers, or insurers affiliated or in any way connected with the person who lends money or extends credit; or

(f) Require property insurance in an amount in excess of the amount which could reasonably be expected to be paid under the policy, or combination of policies, in the event of a loss.

(4) Nothing contained in this section shall prevent a person who lends money or extends credit from placing insurance on real or personal property in the event the mortgagor, borrower, or purchaser has failed to provide required insurance in accordance with the terms of the loan or credit document.

(5) Nothing contained in this section shall apply to credit life or credit disability insurance. [1990 1st ex.s. c 3 § 13; 1988 c 248 § 18; 1984 c 6 § 2; 1977 c 61 § 1; 1957 c 193 § 20.]

Chapter 48.32A

WASHINGTON LIFE AND DISABILITY INSURANCE GUARANTY ASSOCIATION ACT

Sections

48.32A.010	Purpose.
48.32A.020	Scope—Obligations of association.
48.32A.030	Definitions.
48.32A.060	Reinsurance—Guaranty of policies—Contracts.
48.32A.080	Guaranty funds—Assessment of member insurers.
48.32A.090	Certificates of contribution—Allowance as asset— Offset against premium taxes.
48.32A.931	Severability—1990 c 51.

48.32A.010 Purpose. The purpose of this chapter is the creation of funds arising from assessments upon all insurers authorized to transact life or disability insurance business in the state of Washington, to be used to assure to the extent prescribed herein the performance of the insurance contractual obligations of insurers becoming insolvent to residents of this state, and to promote thereby the stability of domestic insurers. In the judgment of the legislature, the foregoing purpose not being capable of accomplishment by a corporation created under general laws, the creation of the nonprofit association hereinafter in this chapter described is deemed essential for the protection of the general welfare. [1990 c 51 § 1; 1971 ex.s. c 259 § 1.]

48.32A.020 Scope—Obligations of association. This chapter shall apply as follows to life insurance policies, disability insurance policies, and annuity contracts of liquidating insurers, other than separate account variable policies and contracts authorized by chapter 48.18A RCW:

(1) To all such policies and contracts of a domestic, foreign, or alien insurer authorized to transact such insurance or annuity business in this state at the time such policies or contracts were issued or at the time of entry of the order of liquidation of the insolvent insurer, and of which the policy or contract owner, insured, annuitant, beneficiary, or payee is a resident of and domiciled within this state. This chapter shall apply only as to the insurance or annuities thereunder of individuals who are residents of and domiciled within this state. The place of residence or domicile shall be determined as of the date of entry of the order of liquidation against the insurer.

(2) To policies and contracts only of insolvent insurers with respect to which an order of liquidation is entered after May 21, 1971.

(3) The obligations of the association created under this chapter shall apply only as to contractual obligations of the insurer under insurance policies and annuity contracts, and shall be no greater than such obligations of the insolvent insurer at the time of entry of the order of liquidation. However, the liability of the association shall in no event exceed:

(a) With respect to any one life, regardless of the number of policies or contracts:

(i) Five hundred thousand dollars in life insurance death benefits, including any net cash surrender and net cash withdrawal values for life insurance;

(ii) Five hundred thousand dollars in disability insurance benefits, including any net cash surrender and net cash withdrawal values; or

(iii) Five hundred thousand dollars in the present value of allocated annuity benefits and annuities established under section 403(b) of the United States internal revenue code.

The association shall not be liable to expend more than five hundred thousand dollars in the aggregate with respect to any one individual under this subsection; or

(b) With respect to any one contract owner covered by any unallocated annuity contract, including governmental retirement plans established under section 401 or 457 of the United States internal revenue code, five million dollars in benefits, irrespective of the number of such contracts held by that contract owner.

(4) This chapter shall not apply to:

(a) Fraternal benefit societies;

(b) Health care service contractors;

(c) Insurance or liability assumed by the liquidating insurer under a contract of reinsurance other than bulk reinsurance;

(d) Any unallocated annuity contract issued to an employee benefit plan protected under the federal pension benefit guaranty corporation; or

(e) Any portion of any unallocated annuity contract which is not issued to or in connection with a specific employee, union, association of natural persons benefit plan, or a government lottery. [1990 c 51 § 2; 1971 ex.s. c 259 § 2.]

48.32A.030 Definitions. Within the meaning of this chapter:

(1) "Association" means "the Washington life and disability insurance guaranty association".

(2) "Board" means the board of directors of the Washington life and disability insurance guaranty association.

(3) "Commissioner" means the insurance commissioner of this state.

(4) "Policies" means life or disability insurance policies; "contracts" means annuity contracts and contracts supplemental to such insurance policies and annuity contracts.

(5) "Liquidating insurer" means an insurer with respect to which an order of liquidation has been entered by a court of competent jurisdiction.

(6) "Fund" means a guaranty fund provided for in RCW 48.32A.080.

(7) "Account" means any one of the three guaranty fund accounts created under RCW 48.32A.080(1).

(8) "Assessment" means a charge made upon an insurer by the board under this chapter for payment into a guaranty fund. The charge shall constitute a legal liability of the insurer so assessed.

(9) "Contributor" means an insurer which has paid an assessment.

(10) "Certificate" means a certificate of contribution provided for in RCW 48.32A.090.

(11) "Unallocated annuity contract" means any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate. [1990 c 51 § 3; 1971 ex.s. c 259 § 3.]

48.32A.060 Reinsurance—Guaranty of policies—Contracts. (1) The association shall, subject to such terms and conditions as it may impose with the approval of the commissioner, assume, reinsure, or guarantee the performance of the policies and contracts, for a resident of the state, of any domestic life or disability insurer with respect to which an order of liquidation has been entered by any court of general jurisdiction in the state of Washington, and shall have power to receive, own, and administer any assets acquired in connection with such assumption, reinsurance, or guaranty. The association, as to any such policy or contract under which there is no default in payment of premiums subsequent to such assumption, reinsurance, or guaranty, shall make or cause to be made prompt payment of the benefits due under the terms of the policy or contract.

(2) The association shall make or cause to be made payment of the death, endowment, or disability insurance or annuity benefits due under the terms of each policy or contract insuring the life or health of, or providing annuity or other benefits for, a resident of this state which was issued or assumed by a foreign or alien insurer with respect to which an order of liquidation has been entered by a court of competent jurisdiction in the state or country of its domicile.

(3) In determining benefits to be paid with respect to the policies and contracts of a particular liquidating insurer the board may give due consideration to amounts

reasonably recoverable or deductible because of the contingent liability, if any, of policyholders of the insurer (if a mutual insurer) or recoverable because of the assessment liability, if any, of the insurer's stockholders (if a stock insurer).

(4) With respect to an insolvent domestic insurer, the board shall have power to petition the court in which the delinquency proceedings are pending for, and the court shall have authority to order and effectuate, such modifications in the terms, benefits, values, and premiums thereafter to be in effect of policies and contracts of the insurer as may reasonably be necessary to effect a bulk reinsurance of such policies and contract in a solvent insurer.

In the event, after the entry of an order of liquidation, an assessment on the members is necessary to increase the assets of the insolvent company to an extent that a bulk reinsurance of such policies may be effected, the court shall have authority to order such assessment.

(5) In addition to any other rights of the association acquired by assignment or otherwise, the association shall be subrogated to the rights of any person entitled to receive benefits under this chapter against the liquidating insurer, or the receiver, rehabilitator, liquidator, or conservator, as the case may be, under the policy or contract with respect to which a payment is made or guaranteed, or obligation assumed by the association pursuant to this section, and the association may require an assignment to it of such rights by any such persons as a condition precedent to the receipt by such person of payment of any benefits under this chapter.

(6) For the purpose of carrying out its obligations under this chapter, the association shall be deemed to be a creditor of the liquidating insurer to the extent of assets attributable to covered policies and contracts reduced by any amounts to which the association is entitled as a subrogee. All assets of the liquidating insurer attributable to covered policies and contracts shall be used to continue all covered policies and contracts and pay all contractual obligations of the liquidating insurer as required by this chapter. Assets attributable to covered policies and contracts, as used in this subsection, are those in that proportion of the assets which the reserves that should have been established for such policies and contracts bear to the reserves that should have been established for all insurances written by the liquidating insurer.

(7) The association shall have the power to petition the superior court for an order appointing the commissioner as receiver of a domestic insurer upon any of the grounds set forth in RCW 48.31.030. [1990 c 51 § 4; 1975 1st ex.s. c 133 § 2; 1971 ex.s. c 259 § 6.]

48.32A.080 Guaranty funds—Assessment of member insurers. (1) For purposes of administration and assessment, the association shall establish and maintain three guaranty fund accounts:

(a) The life insurance and annuity account, which shall be divided into three subaccounts:

- (i) The life insurance subaccount;
- (ii) The allocated annuity subaccount; and

(iii) The unallocated annuity subaccount which shall include contracts qualified under section 403(b) of the United States internal revenue code;

(b) The disability insurance account; and

(c) The general account.

(2) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board shall assess the member insurers, separately for each account, at such times and for such amounts as the board finds necessary. The board shall collect the assessment after thirty days written notice to the member insurers before payment is due. The board may charge reasonable interest for delinquent payment of the assessment.

(3)(a) The amount of any assessment for each account and subaccount shall be determined by the board, and shall be divided among the accounts and subaccounts in the proportion that the premiums received by the liquidating insurer on the policies or contracts covered by each account and subaccount bears to the premiums received by such insurer on all covered policies and contracts.

(b) Assessments against member insurers for each account and subaccount shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account or subaccount bears to such premiums received on business in this state by all assessed member insurers.

(c) Assessments for funds to meet the requirements of the association with respect to a particular liquidating insurer shall not be made until necessary, in the board's opinion, to implement the purposes of this chapter; and in no event shall such an assessment be made with respect to such insurer until an order of liquidation has been entered against the insurer by a court of competent jurisdiction of the insurer's state or country of domicile. Computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determination may not always be possible.

(d) The board may make an assessment of up to one hundred fifty dollars for each member insurer to be deposited in the general account and used for administrative and general expenses in carrying out the provisions of this chapter.

(4)(a) The total of all assessments upon a member insurer for the life and annuity account and for each subaccount shall not in any one calendar year exceed two percent and for the disability account shall not in any one calendar year exceed two percent of such insurer's average premiums received in this state on the policies and contracts covered by the account during the three calendar years preceding the entry of the order of liquidation against the liquidating insurer.

(b) The board may provide a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

(c) If a one percent assessment for any subaccount of the life and annuity account in any one year does not

provide an amount sufficient to carry out the responsibilities of the association, then pursuant to subsection (3) of this section, the board shall access all subaccounts of the life and annuity account for the necessary additional amount, subject to the maximum stated in (a) of this subsection.

(5) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated or deferred, in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association in an account, does not provide in any one year an amount sufficient to carry out the responsibilities of the association with respect to such account, the necessary additional funds shall be assessed as soon thereafter as permitted by this chapter.

(6) The amount in a fund shall be kept at such a sum as in the opinion of the board will enable the association to meet the immediate obligations and liabilities of such fund. Whenever in the opinion of the board the amount in a fund is in excess of such immediate obligations and liabilities, with the approval of the commissioner the association may distribute such excess by retirement of certificates previously issued against the fund. Such distribution shall be made pro rata upon the basis of outstanding certificates, except that by unanimous consent of all directors and with the approval of the commissioner any other reasonable method of retirement of such certificates may be adopted.

(7) As used in this section, "premiums" are those for the calendar year preceding the entry of the order of liquidation as to a particular liquidating insurer, and shall be direct gross insurance premiums and annuity considerations received on policies and contracts to which this chapter applies, less return premiums and considerations and less dividends paid or credited to policyholders.

(8) Upon dissolution of a fund by the repeal of this chapter or otherwise, the fund shall be distributed in the same manner as is provided for the repayment or retirement of certificates. If the amount in the fund at the time of dissolution is in excess of outstanding certificates issued against the fund, such excess shall be distributed among contributing member insurers in such equitable manner as is approved by the commissioner. [1990 c 51 § 5; 1975-'76 2nd ex.s. c 119 § 5; 1971 ex.s. c 259 § 8.]

48.32A.090 Certificates of contribution—Allowance as asset—Offset against premium taxes. (1) The association shall issue to each insurer paying an assessment under this chapter certificates of contribution, in appropriate form and terms as prescribed or approved by the commissioner, for the amounts so paid into the respective funds. All outstanding certificates against a

particular fund shall be of equal dignity and priority without reference to amounts or dates of issue.

(2) An outstanding certificate of contribution shall be shown by the insurer in its financial statements as an admitted asset for such amount and period of time as the commissioner may approve: PROVIDED, That unless a longer period has been allowed by the commissioner the insurer shall in any event at its option have the right to so show a certificate of contribution as an admitted asset at percentages of original face amount for calendar years as follows:

- 100% for the calendar year of issuance;
- 80% for the first calendar year after the year of issuance;
- 60% for the second calendar year after the year of issuance;
- 40% for the third calendar year after the year of issuance;
- 20% for the fourth calendar year after the year of issuance;
- and
- 0% for the fifth and subsequent calendar years after the year of issuance.

Notwithstanding the foregoing, if the value of a certificate of contribution is or becomes less than one thousand dollars, the entire amount may be written off by the insurer in that year.

(3) The insurer shall offset the amount written off by it in a calendar year under subsection (2) of this section against its premium tax liability to this state accrued with respect to business transacted in such year.

(4) Any sums recovered by the association representing sums which have theretofore been written off by contributing insurers and offset against premium taxes as provided in subsection (3) of this section, shall be paid by the association to the commissioner and by him deposited with the state treasurer for credit to the general fund of the state of Washington.

(5) No distribution to stockholders, if any, of a liquidating insurer shall be made unless and until the total amount of assessments levied by the association with respect to such insurer have been fully recovered by the association. [1990 c 51 § 6; 1977 ex.s. c 183 § 2; 1975 1st ex.s. c 133 § 1; 1971 ex.s. c 259 § 9.]

48.32A.931 Severability—1990 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. [1990 c 51 § 7.]

Chapter 48.35 ALIEN INSURERS

Sections

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48.35.200	Domestication—When effective—Deposits—Transfer of assets.

48.35.010 Application—Definition. This chapter applies to all alien insurers using this state as a state of entry to transact insurance in the United States.

For the purposes of this chapter, "alien insurer" has the definition supplied in RCW 48.05.010. [1991 c 268 § 1.]

48.35.020 Deposit required—Amount. (1) An alien insurer may use this state as a state of entry to transact insurance in the United States by maintaining in this state a deposit of assets in a solvent trust company or other solvent financial institution having trust powers domiciled in this state and so designated by the commissioner. The commissioner's designated depositories are authorized to receive and hold a deposit of assets. A deposit so held is at the expense of the insurer. A solvent financial institution domiciled in this state, the deposits of which are insured by the federal deposit insurance corporation and which is a member of the federal reserve system, may be designated as the commissioner's depository to receive and hold a deposit of assets.

(2) The deposit, together with other trust deposits of the insurer held in the United States for the same purpose, must be in an amount not less than the higher of deposits required of an alien insurer under RCW 48.05.090 or five hundred thousand dollars and consist of eligible assets as set forth in RCW 48.16.030.

(3) The deposit may be referred to as "trusteed assets." [1991 c 268 § 2.]

48.35.030 Deposit required—Duration. The deposit required by this chapter must be for the benefit, security, and protection of the policyholders or creditors, or both, of the insurer in the United States. It shall be maintained as long as there is outstanding any liability of the insurer arising out of its insurance transactions in the United States. [1991 c 268 § 4.]

48.35.040 Trusts created before May 17, 1991. All trusts of trustee assets created before May 17, 1991,

must be continued under the instruments creating those trusts. If the commissioner determines that the instruments are inconsistent with the provisions of this chapter, the insurer shall correct those inconsistencies within six months of the commissioner's determination. [1991 c 268 § 3.]

48.35.050 Alien insurer—State authorization required. An alien insurer proposing to use this state as a state of entry to transact insurance in the United States, must be authorized to transact insurance in this state and may make and execute any trust agreement required by this chapter. [1991 c 268 § 6.]

48.35.060 Trusteed assets—Creation—Commissioner's approval of trust agreement. (1) The alien insurer shall create the trustee assets required by this chapter under a written trust agreement between the insurer and the trustee, consistent with the provisions of this chapter, and in such form and manner as the commissioner may designate or approve.

(2) The agreement is effective when filed with and approved in writing by the commissioner. The commissioner shall not approve any trust agreement not found to be in compliance with state or federal law or the terms of which do not in fact provide reasonably adequate protection for the insurer's policyholders or creditors, or both, in the United States. [1991 c 268 § 5.]

48.35.070 Trust agreement—Amendment. A trust agreement may be amended. However, the amendment is not effective until filed with the commissioner and the commissioner finds and states in writing that the amendment is in compliance with this chapter. [1991 c 268 § 7.]

48.35.080 Trust agreement—Withdrawal of commissioner's approval. The commissioner may withdraw his or her approval of a trust agreement, or of an amendment to the agreement, if the commissioner determines that the requisites for the approval no longer exist. The determination shall be made after notice and a hearing as provided in chapter 48.04 RCW. [1991 c 268 § 8.]

48.35.090 Trust agreement—Vesting of trustee assets. The trust agreement must provide that title to the trustee assets vests and remains vested in the trustees and their successors for the purposes of the trust deposit. [1991 c 268 § 9.]

48.35.100 Trusteed assets—Trustee's records. The trustee shall keep the trustee assets separate from other assets and shall maintain a record sufficient to identify the trustee assets at all times. [1991 c 268 § 10.]

48.35.110 Trusteed assets—Trustee's statements—Commissioner's approval. (1) The trustee of trustee assets shall file statements with the commissioner, in a form required by the commissioner, certifying the character and amount of the assets.

(2) If the trustee fails to file a requested statement after a reasonable time has expired, the commissioner may suspend or revoke the certificate of authority of the insurer required under RCW 48.05.030. [1991 c 268 § 11.]

48.35.120 Trusteed assets—Examination—Commissioner's approval of assignment or transfer. (1) The commissioner may examine trusteed assets of any insurer at any time in accordance with the same conditions and procedures governing the examination of insurers provided in chapter 48.03 RCW.

(2) The depositing insurer shall not assign or transfer, voluntarily, involuntarily, or by operation of law, all or a part of its interest in the trusteed assets without the prior written approval of the commissioner, and a transfer or assignment occurring without approval is void. The assignee or transferee of the trusteed assets shall irrevocably and automatically assume all of the obligations and liabilities of the assignor or transferor. [1991 c 268 § 12.]

48.35.130 Trusteed assets—Commissioner's approval of withdrawals. (1) The trust agreement must provide that the commissioner shall authorize and approve in writing all withdrawals of trusteed assets in advance except as follows:

(a) Any or all income, earnings, dividends, or interest accumulations of the trusteed assets may be paid over to the United States manager of the insurer upon request of the insurer or the manager;

(b) Withdrawals coincident with substitutions of securities or assets that are at least equal in value to those being withdrawn, if the substituted securities or assets would be eligible for investment by domestic insurers, and the insurer's United States manager requests the withdrawal in writing under a general or specific written authority previously given or delegated by the insurer's board of directors, or other similar governing body, and a copy of such authority has been filed with the trustee;

(c) For the purpose of making deposits required by another state in which the insurer is, or becomes, an authorized insurer and for the protection of the insurer's policyholders or creditors, or both, in the state or United States, if the withdrawal does not reduce the insurer's deposit in this state to an amount less than the minimum deposit required. The trustee shall transfer any assets withdrawn and in the amount required to be deposited in the other state, directly to the depository required to receive the deposit as certified in writing by the public official having supervision of insurance in that state; and

(d) For the purpose of transferring the trusteed assets to an official liquidator, conservator, or rehabilitator under an order of a court of competent jurisdiction.

(2) The commissioner shall authorize a withdrawal of only those assets that are in excess of the amount of assets required to be held in trust, or as may otherwise be consistent with the provisions of this chapter.

(3) If at any time the insurer becomes insolvent or if its assets held in the United States are less than required as determined by the commissioner, the commissioner

shall order in writing the trustee to suspend the withdrawal of assets until a further order of the commissioner releasing the assets. [1991 c 268 § 13.]

48.35.140 Trusteed assets—Substitution of trustee. A new trustee may be substituted for the original trustee of trusteed assets in the event of a vacancy or for other proper cause. Any such substitution is subject to the commissioner's approval. [1991 c 268 § 14.]

48.35.150 Trusteed assets—Compensation and expenses of trustees. The insurer shall provide for the compensation and expenses of the trustees of assets of an alien insurer under this chapter in an amount, or on a basis, as agreed upon by the insurer and the trustees in the trust agreement, subject to the prior approval of the commissioner. [1991 c 268 § 15.]

48.35.160 United States manager—Mexican or Canadian insurers. The provisions of this chapter applicable to a United States manager shall, in the case of insurers domiciled in Mexico or Canada, be deemed to refer to the president, vice-president, secretary, or treasurer of the Mexican or Canadian insurer. [1991 c 268 § 16.]

48.35.170 Domestication of alien insurer—Commissioner's approval. (1) Upon compliance with this chapter, an alien insurer authorized to do business in this state may, with the prior written approval of the commissioner, domesticate its United States branch by entering into an agreement in writing with a domestic insurer providing for the acquisition by the domestic insurer of all of the assets and the assumption of all of the liabilities of the United States branch.

(2) The acquisition of assets and assumption of liabilities of the United States branch by the domestic insurer is effected by filing with the commissioner an instrument or instruments of transfer and assumption in form satisfactory to the commissioner and executed by the alien insurer and the domestic insurer. [1991 c 268 § 17.]

48.35.180 Domestication agreement—Necessary authorization. (1) The domestication agreement shall be authorized, adopted, approved, signed, and acknowledged by the alien insurer in accordance with the laws of the country under which it is organized.

(2) In the case of a domestic insurer, the domestication agreement shall be approved, adopted, and authorized by its board of directors and executed by its president or a vice-president and attested by its secretary or assistant secretary under its corporate seal. [1991 c 268 § 18.]

48.35.190 Domestication agreement—Commissioner's approval of corporate proceedings. An executed counterpart of the domestication agreement, together with certified copies of the corporate proceedings of the domestic insurer and the alien insurer, approving, adopting, and authorizing the execution of the domestication agreement, shall be submitted to the commissioner for approval. The commissioner shall thereupon

consider the agreement, and, if the commissioner finds that the same is in accordance with the provisions hereof and that the interests of the policyholders of the United States branch of the alien insurer and of the domestic insurer are not materially adversely affected, the commissioner shall approve the domestication agreement and authorize the consummation thereof. [1991 c 268 § 19.]

48.35.200 Domestication—When effective—Deposits—Transfer of assets. (1) Upon the filing with the commissioner of a certified copy of the instrument of transfer and assumption pursuant to which a domestic company succeeds to the business and assets of the United States branch of an alien insurer and assumes all its liabilities, the domestication of the United States branch is deemed effective; and all the rights, franchises, and interests of the United States branch in and to every species of property and things, in actions thereunder belonging, are deemed as transferred to and vested in the domestic insurer, and simultaneously the domestic insurer is deemed to have assumed all of the liabilities of the United States branch. The domestic insurer is considered as having the age as the oldest of the two parties to the domestication agreement for purposes of laws relating to age of company.

(2) All deposits of the United States branch held by the commissioner, or by state officers, or other state regulatory agencies pursuant to requirements of state laws, are deemed to be held as security for the satisfaction by the domestic insurer of all liabilities to policyholders within the United States assumed from the United States branch; and the deposits are deemed to be assets of the domestic insurer and are reported as such in the annual financial statements and other reports that the domestic insurer may be required to file. Upon the ultimate release by a state officer or agency of a deposit, the securities and cash constituting the released deposit is delivered and paid over to the domestic insurer as the lawful successor in interest to the United States branch.

(3) Contemporaneously with the consummation of the domestication of the United States branch, the commissioner shall direct the trustee, if any, of the United States branch's trusteed assets, as set forth in RCW 48.35.020, to transfer and deliver to the domestic insurer all assets, if any, held by such trustee. [1991 c 268 § 20.]

Chapter 48.44

HEALTH CARE SERVICES

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48.44.010 Definitions. For the purposes of this chapter:

(1) "Health care services" means and includes medical, surgical, dental, chiropractic, hospital, optometric, podiatric, pharmaceutical, ambulance, custodial, mental health, and other therapeutic services.

(2) "Provider" means any health professional, hospital, or other institution, organization, or person that furnishes health care services and is licensed to furnish such services.

(3) "Health care service contractor" means any corporation, cooperative group, or association, which is sponsored by or otherwise intimately connected with a provider or group of providers, who or which not otherwise being engaged in the insurance business, accepts prepayment for health care services from or for the benefit of persons or groups of persons as consideration for providing such persons with any health care services.

(4) "Participating provider" means a provider, who or which has contracted in writing with a health care service contractor to accept payment from and to look solely to such contractor according to the terms of the subscriber contract for any health care services rendered to a person who has previously paid, or on whose behalf prepayment has been made, to such contractor for such services.

(5) "Enrolled participant" means a person or group of persons who have entered into a contractual arrangement or on whose behalf a contractual arrangement has been entered into with a health care service contractor to receive health care services.

(6) "Commissioner" means the insurance commissioner.

(7) "Uncovered expenditures" means the costs to the health care service contractor for health care services that are the obligation of the health care service contractor for which an enrolled participant would also be liable in the event of the health care service contractor's insolvency and for which no alternative arrangements have been made as provided herein. The term does not include expenditures for covered services when a provider has agreed not to bill the enrolled participant even though the provider is not paid by the health care service contractor, or for services that are guaranteed, insured or assumed by a person or organization other than the health care service contractor.

(8) "Copayment" means an amount specified in a group or individual contract which is an obligation of an enrolled participant for a specific service which is not fully prepaid.

(9) "Deductible" means the amount an enrolled participant is responsible to pay before the health care service contractor begins to pay the costs associated with treatment.

(10) "Group contract" means a contract for health care services which by its terms limits eligibility to members of a specific group. The group contract may include coverage for dependents.

(11) "Individual contract" means a contract for health care services issued to and covering an individual. An individual contract may include dependents.

(12) "Carrier" means a health maintenance organization, an insurer, a health care service contractor, or other entity responsible for the payment of benefits or provision of services under a group or individual contract.

(13) "Replacement coverage" means the benefits provided by a succeeding carrier.

(14) "Insolvent" or "insolvency" means that the organization has been declared insolvent and is placed under an order of liquidation by a court of competent jurisdiction.

(15) "Fully subordinated debt" means those debts that meet the requirements of RCW 48.44.037(3) and are recorded as equity.

(16) "Net worth" means the excess of total admitted assets as defined in RCW 48.12.010 over total liabilities but the liabilities shall not include fully subordinated debt. [1990 c 120 § 1; 1986 c 223 § 1. Prior: 1983 c 286 § 3; 1983 c 154 § 3; 1980 c 102 § 10; 1965 c 87 § 1; 1961 c 197 § 1; 1947 c 268 § 1; Rem. Supp. 1947 § 6131-10.]

Severability—1983 c 286: See note following RCW 48.44.309.

Severability—1983 c 154: See note following RCW 48.44.299.

48.44.020 Contracts for services—Examination of contract forms by commissioner—Grounds for disapproval—Liability of participant. (1) Any health care service contractor may enter into contracts with or for the benefit of persons or groups of persons which require prepayment for health care services by or for such persons in consideration of such health care service contractor providing one or more health care services to such persons and such activity shall not be subject to the laws relating to insurance if the health care services are rendered by the health care service contractor or by a participating provider.

(2) The commissioner may on examination, subject to the right of the health care service contractor to demand and receive a hearing under chapters 48.04 and 34.05 RCW, disapprove any contract form for any of the following grounds:

(a) If it contains or incorporates by reference any inconsistent, ambiguous or misleading clauses, or exceptions and conditions which unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the contract; or

(b) If it has any title, heading or other indication of its provisions which is misleading; or

(c) If purchase of health care services thereunder is being solicited by deceptive advertising; or

(d) If, the benefits provided therein are unreasonable in relation to the amount charged for the contract;

(e) If it contains unreasonable restrictions on the treatment of patients;

(f) If it violates any provision of this chapter;

(g) If it fails to conform to minimum provisions or standards required by regulation made by the commissioner pursuant to chapter 34.05 RCW;

(h) If any contract for health care services with any state agency, division, subdivision, board or commission or with any political subdivision, municipal corporation, or quasi-municipal corporation fails to comply with state law.

(3)(a) Every contract between a health care service contractor and a participating provider of health care services shall be in writing and shall state that in the event the health care service contractor fails to pay for health care services as provided in the contract, the enrolled participant shall not be liable to the provider for sums owed by the health care service contractor. Every such contract shall provide that this requirement shall survive termination of the contract.

(b) No participating provider, agent, trustee or assignee may maintain any action against an enrolled participant to collect sums owed by the health care service contractor. [1990 c 120 § 5; 1986 c 223 § 2; 1985 c 283 § 1; 1983 c 286 § 4; 1973 1st ex.s. c 65 § 1; 1969 c 115 § 1; 1961 c 197 § 2; 1947 c 268 § 2; Rem. Supp. 1947 § 6131-11.]

Severability—1983 c 286: See note following RCW 48.44.309.

48.44.023 Basic health care service contract—Fewer than twenty-five employees. A basic health care service contract may be offered to employers of fewer than twenty-five employees. Such a basic health care service contract shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.44.225, 48.44.240, 48.44.245, 48.44.290, 48.44.300, 48.44.310, 48.44.320, 48.44.325, 48.44.330, 48.44.335, 48.44.340, 48.44.344, 48.44.360, 48.44.400, 48.44.440, 48.44.450, and 48.44.460.

Nothing in this section shall prohibit an insurer from offering, or a purchaser from seeking, benefits in excess of the basic coverage authorized herein. All forms, policies, and contracts shall be submitted for approval to the commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

The policy authorized by this section shall not supplant or supersede any existing policy for the benefit of employees in this state. Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein. [1990 c 187 § 3.]

Finding—Intent—Severability—1990 c 187: See notes following RCW 48.21.045.

48.44.026 Payment for certain health care services. Checks in payment for claims pursuant to any health

care service contract for health care services provided by persons licensed or regulated under chapters 18.22, 18.25, 18.29, 18.32, 18.53, 18.57, 18.64, 18.71, 18.73, 18.74, 18.83, or 18.88 RCW, where the provider is not a participating provider under a contract with the health care service contractor, shall be made out to both the provider and the enrolled participant with the provider as the first named payee, jointly, to require endorsement by each: PROVIDED, That payment shall be made in the single name of the enrolled participant if the enrolled participant as part of his or her claim furnishes evidence of prepayment to the health care service provider: AND PROVIDED FURTHER, That nothing in this section shall preclude a health care service contractor from voluntarily issuing payment in the single name of the provider. [1990 c 120 § 6; 1989 c 122 § 1; 1984 c 283 § 1; 1982 c 168 § 1.]

48.44.030 Underwriting of indemnity by insurance policy, bond, securities, or cash deposit. If any of the health care services which are promised in any such agreement are not to be performed by the health care service contractor, or by a participating provider, such activity shall not be subject to the laws relating to insurance, provided provision is made for reimbursement or indemnity of the persons who have previously paid, or on whose behalf prepayment has been made, for such services. Such reimbursement or indemnity shall either be underwritten by an insurance company authorized to write accident, health and disability insurance in the state or guaranteed by a surety company authorized to do business in this state, or guaranteed by a deposit of cash or securities eligible for investment by insurers pursuant to chapter 48.13 RCW, with the insurance commissioner, as hereinafter provided. If the reimbursement or indemnity is underwritten by an insurance company, the contract or policy of insurance may designate the health care service contractor as the named insured, but shall be for the benefit of the persons who have previously paid, or on whose behalf prepayment has been made, for such health care services. If the reimbursement or indemnity is guaranteed by a surety company, the surety bond shall designate the state of Washington as the named obligee, but shall be for the benefit of the persons who have previously paid, or on whose behalf prepayment has been made, for such health care services, and shall be in such amount as the insurance commissioner shall direct, but in no event in a sum greater than the amount of one hundred fifty thousand dollars or the amount necessary to cover incurred but unpaid reimbursement or indemnity benefits as reported in the last annual statement filed with the insurance commissioner, and adjusted to reflect known or anticipated increases or decreases during the ensuing year, plus an amount of unearned prepayments applicable to reimbursement or indemnity benefits satisfactory to the insurance commissioner, whichever amount is greater. A copy of such insurance policy or surety bond, as the case may be, and any modification thereof, shall be filed with the insurance commissioner. If the reimbursement or indemnity is guaranteed by a deposit of cash or securities,

such deposit shall be in such amount as the insurance commissioner shall direct, but in no event in a sum greater than the amount of one hundred fifty thousand dollars or the amount necessary to cover incurred but unpaid reimbursement or indemnity benefits as reported in the last annual statement filed with the insurance commissioner, and adjusted to reflect known or anticipated increases or decreases during the ensuing year, plus an amount of unearned prepayments applicable to reimbursement or indemnity benefits satisfactory to the insurance commissioner, whichever amount is greater. Such cash or security deposit shall be held in trust by the insurance commissioner and shall be for the benefit of the persons who have previously paid, or on whose behalf prepayment has been made, for such health care services. [1990 c 120 § 7; 1986 c 223 § 3; 1981 c 339 § 22; 1969 c 115 § 2; 1961 c 197 § 3; 1947 c 268 § 3; Rem. Supp. 1947 § 6131-12.]

48.44.033 Financial failure—Supervision of commissioner—Priority of distribution of assets. (1) Any rehabilitation, liquidation, or conservation of a health care service contractor shall be deemed to be the rehabilitation, liquidation, or conservation of an insurance company and shall be conducted under the supervision of the commissioner pursuant to the law governing the rehabilitation, liquidation, or conservation of insurance companies. The commissioner may apply for an order directing the commissioner to rehabilitate, liquidate, or conserve a health care service contractor upon any one or more grounds set out in RCW 48.31.030, 48.31.050, and 48.31.080.

(2) For purpose of determining the priority of distribution of general assets, claims of enrolled participants and enrolled participants' beneficiaries shall have the same priority as established by RCW 48.31.280 for policyholders and beneficiaries of insureds of insurance companies. If an enrolled participant is liable to any provider for services provided pursuant to and covered by the health care plan, that liability shall have the status of an enrolled participant claim for distribution of general assets.

(3) Any provider who is obligated by statute or agreement to hold enrolled participants harmless from liability for services provided pursuant to and covered by a health care plan shall have a priority of distribution of the general assets immediately following that of enrolled participants and enrolled participants' beneficiaries as described herein, and immediately preceding the priority of distribution described in chapter 48.31 RCW. [1990 c 120 § 2.]

48.44.035 Limited health care service—Uncovered expenditures. (1) For purposes of this section only, "limited health care service" means dental care services, vision care services, mental health services, chemical dependency services, pharmaceutical services, podiatric care services, and such other services as may be determined by the commissioner to be limited health services, but does not include hospital, medical, surgical, emergency, or out-of-area services except as those services

are provided incidentally to the limited health services set forth in this subsection.

(2) For purposes of this section only, a "limited health care service contractor" means a health care service contractor that offers one and only one limited health care service.

(3) For all limited health care service contractors that have had a certificate of registration for less than three years, their uncovered expenditures shall be either insured or guaranteed by a foreign or domestic carrier admitted in the state of Washington or by another carrier acceptable to the commissioner. All such contractors shall also deposit with the commissioner one-half of one percent of their projected premium for the next year in cash, approved surety bond, securities, or other form acceptable to the commissioner.

(4) For all limited health care service contractors that have had a certificate of registration for three years or more, their uncovered expenditures shall be assured by depositing with the insurance commissioner twenty-five percent of their last year's uncovered expenditures as reported to the commissioner and adjusted to reflect any anticipated increases or decreases during the ensuing year plus an amount for unearned prepayments; in cash, approved surety bond, securities, or other form acceptable to the commissioner. Compliance with subsection (3) of this section shall also constitute compliance with this requirement.

(5) Limited health service contractors need not comply with RCW 48.44.030 or 48.44.037. [1990 c 120 § 3.]

48.44.037 Minimum net worth—Requirement to maintain—Determination of amount. (1)(a) Except as provided in subsection (2) of this section, every health care service contractor must have a net worth of one million five hundred thousand dollars at the time of initial registration under this chapter and a net worth of one million dollars thereafter. The commissioner is authorized to establish standards for reviewing a health care service contractor's financial integrity when, for any reason, its net worth is reduced below one million dollars. When satisfied that such a health care service contractor is financially stable and not hazardous to its enrolled participants, the commissioner may waive compliance with the one million dollar net worth standard otherwise required by this subsection. When such a health care service contractor's net worth falls below five hundred thousand dollars, the commissioner shall require that net worth be increased to one million dollars.

(b) A health care service contractor who fails to maintain the required net worth must cure that defect in compliance with an order of the commissioner rendered in conformity with rules adopted under chapter 34.05 RCW. The commissioner may take appropriate action to assure that the continued operation of the health care service contractor will not be hazardous to its enrolled participants.

(2) A health care service contractor registered before June 7, 1990, must maintain a net worth of:

(a) Twenty-five percent of the amount required by subsection (1) of this section by December 31, 1990;

(b) Fifty percent of the amount required by subsection (1) of this section by December 31, 1991;

(c) Seventy-five percent of the amount required by subsection (1) of this section by December 31, 1992; and

(d) One hundred percent of the amount required by subsection (1) of this section by December 31, 1993.

(3)(a) In determining net worth, no debt shall be considered fully subordinated unless the subordination is in a form acceptable to the commissioner. An interest obligation relating to the repayment of a subordinated debt must be similarly subordinated.

(b) The interest expenses relating to the repayment of a fully subordinated debt shall not be considered uncovered expenditures.

(c) A subordinated debt incurred by a note meeting the requirement of this section, and otherwise acceptable to the commissioner, shall not be considered a liability and shall be recorded as equity.

(4) Every health care service contractor shall, when determining liabilities, include an amount estimated in the aggregate to provide for any unearned premium and for the payment of all claims for health care expenditures which have been incurred, whether reported or unreported, which are unpaid and for which the organization is or may be liable, and to provide for the expense of adjustment or settlement of the claims.

Liabilities shall be computed in accordance with regulations adopted by the commissioner upon reasonable consideration of the ascertained experience and character of the health care service contractor.

(5) All income from reserves on deposit with the commissioner shall belong to the depositing health care service contractor and shall be paid to it as it becomes available.

(6) Any funded reserve required by this chapter shall be considered an asset of the health care service contractor in determining the organization's net worth.

(7) A health care service contractor that has made a securities deposit with the commissioner may, at its option, withdraw the securities deposit or any part thereof after first having deposited or provided in lieu thereof an approved surety bond, a deposit of cash or securities, or any combination of these or other deposits of equal amount and value to that withdrawn. Any securities and surety bond shall be subject to approval by the commissioner before being substituted. [1990 c 120 § 4.]

48.44.055 Plan for handling insolvency—Commissioner's review. Each health care service contractor shall have a plan for handling insolvency that allows for continuation of benefits for the duration of the contract period for which premiums have been paid and continuation of benefits to members who are confined on the date of insolvency in an inpatient facility until their discharge or expiration of benefits. The commissioner shall approve such a plan if it includes:

(1) Insurance to cover the expenses to be paid for continued benefits after insolvency;

(2) Provisions in provider contracts that obligate the provider to provide services for the duration of the period after the health care service contractor's insolvency

for which premium payment has been made and until the enrolled participants are discharged from inpatient facilities;

(3) Use of insolvency reserves established under RCW 48.44.030;

(4) Acceptable letters of credit or approved surety bonds; or

(5) Any other arrangements the commissioner and the organization mutually agree are appropriate to assure that the benefits are continued. [1990 c 120 § 11.]

48.44.057 Insolvency—Commissioner's duties—Participants' options—Allocation of coverage. (1)(a) In the event of insolvency of a health services contractor or health maintenance organization and upon order of the commissioner, all other carriers then having active enrolled participants under a group plan with the affected agreement holder that participated in the enrollment process with the insolvent health services contractor or health maintenance organization at a group's last regular enrollment period shall offer the eligible enrolled participants of the insolvent health services contractor or health maintenance organization the opportunity to enroll in an existing group plan without medical underwriting during a thirty-day open enrollment period, commencing on the date of the insolvency. Eligible enrolled participants shall not be subject to preexisting condition limitations except to the extent that a waiting period for a preexisting condition has not been satisfied under the insolvent carrier's group plan. An open enrollment shall not be required where the agreement holder participates in a self-insured, self-funded, or other health plan exempt from commissioner rule, unless the plan administrator and agreement holder voluntarily agree to offer a simultaneous open enrollment and extend coverage under the same enrollment terms and conditions as are applicable to carriers under this title and rules adopted under this title. If an exempt plan was offered during the last regular open enrollment period, then the carrier may offer the agreement holder the same coverage as any self-insured plan or plans offered by the agreement holder without regard to coverage, benefit, or provider requirements mandated by this title for the duration of the current agreement period.

(b) For purposes of this subsection only, the term "carrier" means a health maintenance organization or a health care services contractor. In the event of insolvency of a carrier and if no other carrier has active enrolled participants under a group plan with the affected agreement holder, or if the commissioner determines that the other carriers lack sufficient health care delivery resources to assure that health services will be available or accessible to all of the group enrollees of the insolvent carrier, then the commissioner shall allocate equitably the insolvent carrier's group agreements for these groups among all carriers that operate within a portion of the insolvent carrier's area, taking into consideration the health care delivery resources of each carrier. Each carrier to which a group or groups are allocated shall offer the agreement holder, without medical underwriting, the carrier's existing coverage that is

most similar to each group's coverage with the insolvent carrier at rates determined in accordance with the successor carrier's existing rating methodology. The eligible enrolled participants shall not be subject to preexisting condition limitations except to the extent that a waiting period for a preexisting condition has not been satisfied under the insolvent carrier's group plan. No offering by a carrier shall be required where the agreement holder participates in a self-insured, self-funded, or other health plan exempt from commissioner rule. The carrier may offer the agreement holder the same coverage as any self-insured plan or plans offered by the agreement holder without regard to coverage, benefit, or provider requirements mandated by this title for the duration of the current agreement period.

(2) The commissioner shall also allocate equitably the insolvent carrier's nongroup enrolled participants who are unable to obtain coverage among all carriers that operate within a portion of the insolvent carrier's service area, taking into consideration the health care delivery resources of the carrier. Each carrier to which nongroup enrolled participants are allocated shall offer the nongroup enrolled participants the carrier's existing comprehensive conversion plan, without additional medical underwriting, at rates determined in accordance with the successor carrier's existing rating methodology. The eligible enrolled participants shall not be subject to preexisting condition limitations except to the extent that a waiting period for a preexisting condition has not been satisfied under the insolvent carrier's plan.

(3) Any agreements covering participants allocated pursuant to subsections (1)(b) and (2) of this section to carriers pursuant to this section may be rerated after ninety days of coverage.

(4) A limited health care service contractor shall not be required to offer services other than its one limited health care service to any enrolled participant of an insolvent carrier. [1990 c 120 § 8.]

48.44.070 Contracts to be filed with commissioner.

(1) Forms of contracts between health care service contractors and participating providers shall be filed with the insurance commissioner prior to use.

(2) Any contract form not affirmatively disapproved within fifteen days of filing shall be deemed approved, except that the commissioner may extend the approval period an additional fifteen days upon giving notice before the expiration of the initial fifteen-day period. The commissioner may approve such a contract form for immediate use at any time. Approval may be subsequently withdrawn for cause.

(3) Subject to the right of the health care service contractor to demand and receive a hearing under chapters 48.04 and 34.05 RCW, the commissioner may disapprove such a contract form if it is in any respect in violation of this chapter or if it fails to conform to minimum provisions or standards required by the commissioner by rule under chapter 34.05 RCW. [1990 c 120 § 9; 1965 c 87 § 2; 1961 c 197 § 4.]

48.44.080 Master lists of contractor's participating providers—Filing with commissioner—Notice of termination or participation. Every health care service contractor shall file with its annual statement with the insurance commissioner a master list of the participating providers with whom or with which such health care service contractor has executed contracts of participation, certifying that each such participating provider has executed such contract of participation. The health care service contractor shall on the first day of each month notify the insurance commissioner in writing in case of the termination of any such contract, and of any participating provider who has entered into a participating contract during the preceding month. [1990 c 120 § 10; 1986 c 223 § 4; 1965 c 87 § 3; 1961 c 197 § 5.]

48.44.240 Chemical dependency benefits—Provisions of group contracts delivered or renewed after January 1, 1988. Each group contract for health care services which is delivered or issued for delivery or renewed, on or after January 1, 1988, shall contain provisions providing benefits for the treatment of chemical dependency rendered to covered persons by a provider which is an "approved treatment facility or program" under *RCW 70.96A.020(3). [1990 1st ex.s. c 3 § 12; 1987 c 458 § 16; 1975 1st ex.s. c 266 § 14; 1974 ex.s. c 119 § 4.]

*Reviser's note: RCW 70.96A.020(3) defines "approved treatment program."

Effective date—Severability—1987 c 458: See notes following RCW 48.21.160.

Severability—1975 1st ex.s. c 266: See note following RCW 31.08.175.

Legislative declaration—1974 ex.s. c 119: See RCW 48.21.160.
Chemical dependency benefits, rules: RCW 48.21.197.

48.44.470 Nonresident pharmacies. For the purposes of this chapter, a nonresident pharmacy is defined as any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an enrolled participant or his/her representative, controlled substances, legend drugs, or devices into this state.

After October 1, 1991, a health care service contractor providing coverage of prescription drugs from nonresident pharmacies may only provide coverage from licensed nonresident pharmacies. The health care service contractors shall obtain proof of current licensure in conformity with this section and RCW 18.64.350 through 18.64.400 from the nonresident pharmacy and keep that proof of licensure on file.

The department may request from the health care service contractor the proof of current licensure for all nonresident pharmacies through which the insurer is providing coverage for prescription drugs for residents of the state of Washington. This information, which may constitute a full or partial customer list, shall be confidential and exempt from public disclosure, and from the requirements of chapter 42.17 RCW. The board or the department shall not be restricted in the disclosure of the name of a nonresident pharmacy that is or has been licensed under RCW 18.64.360 or 18.64.370 or of the

identity of a nonresident pharmacy disciplined under RCW 18.64.350 through 18.64.400. [1991 c 87 § 9.]

Effective date—1991 c 87: See note following RCW 18.64.350.

Chapter 48.45 RURAL HEALTH CARE

Sections	
48.45.005	Findings.
48.45.007	Recommendations.
48.45.010	Definitions.
48.45.020	Rural health care service arrangements.
48.45.030	Rule making.

48.45.005 Findings. The legislature finds that the residents of rural communities are having difficulties in locating and purchasing affordable health insurance. The legislature further finds that many rural communities have sufficient funds to pay for needed services, but those funds are being expended elsewhere causing insufficient funding of local health services. As part of the solution to this problem, rural communities need to be able to structure the financing of local health services to better serve local residents. The legislature further finds that as rural communities need well financed and organized health care, it is in the interest of residents of rural communities that existing unauthorized entities comply with appropriate fiscal solvency standards and consumer safeguards, and that those entities be given an opportunity to come into compliance with existing state laws. [1990 c 271 § 20.]

48.45.007 Recommendations. The insurance commissioner shall establish a committee to recommend to the governor and legislature methods to improve the availability of affordable health insurance or coverage in rural communities. The recommendations shall consider (1) the unique and varied nature of rural communities, (2) methods to maximize the retention of local health expenditures in rural communities, (3) the need of rural communities to have sufficient control over the health services in their communities so that they may improve the quality and have the appropriate quantity of those health services, (4) financial stability and consumer protection issues, and (5) the feasibility of such recommendations. The committee shall examine methods of improving the way currently authorized carriers address rural health issues and shall examine the use of alternative arrangements specifically adapted to rural communities including, but not limited to, the use of local service contractors in combination with other entities authorized under Title 48 RCW.

The committee shall include the insurance commissioner or the commissioner's designee and representatives of rural communities, rural health providers, entities authorized under Title 48 RCW, the department of health, and other individuals, as appointed by the insurance commissioner.

These recommendations shall be submitted to the governor and legislature no later than November 1, 1990.

The committee established under this section shall dissolve on January 1, 1991. [1990 c 271 § 21.]

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

(1) "Rural community" means any grouping of consumers, seventy-five percent of whom reside in areas outside of a standard metropolitan statistical area as defined by the United States bureau of census.

(2) "Consumer" means any person enrolled and eligible to receive benefits in the rural health care arrangement.

(3) "Rural health care service arrangement" or "arrangement" means any arrangement which is established or maintained for the purpose of offering or providing through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits in the event of sickness, accident, or disability in a rural community, as defined in this section, that is subject to the jurisdiction of the insurance commissioner but is not now a currently authorized carrier. [1990 c 271 § 22.]

48.45.020 Rural health care service arrangements. Rural health care service arrangements existing on March 29, 1990, may continue in full operation only so long as they comply with all of the following:

(1) Within ten days following March 29, 1990, all rural health care service arrangements shall inform the insurance commissioner of their intent to apply for approval to operate as an entity authorized under chapter 48.44 RCW or intend to merge with an entity authorized under Title 48 RCW or merge with an entity defined in this section;

(2) The arrangement submits an application for approval as an entity authorized under chapter 48.44 RCW by May 1, 1990;

(3) The arrangement has one hundred thousand dollars on deposit with the insurance commissioner by July 1, 1990;

(4) The arrangement has one hundred fifty thousand dollars on deposit with the insurance commissioner by September 1, 1990; and

(5) The arrangement complies with all reasonable requirements of the insurance commissioner excluding the deposit requirement, except as outlined in this section.

If such rural health care service arrangements fail to comply with any of the above requirements, or if during the application process an entity engages in any activities which the insurance commissioner reasonably determines may cause imminent harm to consumers, the entity may be subject to appropriate legal action by the insurance commissioner pursuant to the authority provided in Title 48 RCW.

A rural health care service arrangement which comes into compliance with Title 48 RCW through the method outlined in this chapter shall be subject to all applicable requirements of Title 48 RCW except that the deposit requirements shall not be increased until May 1, 1991. [1990 c 271 § 23.]

48.45.030 Rule making. The insurance commissioner, pursuant to chapter 34.05 RCW, may promulgate rules to implement RCW 48.45.010 and 48.45.020. [1990 c 271 § 24.]

Chapter 48.46

HEALTH MAINTENANCE ORGANIZATIONS

Sections

48.46.020	Definitions.
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48.46.040	Certificate of registration—Issuance—Grounds for refusal—Name restrictions—Inspection and review of facilities.
48.46.066	Basic health maintenance agreement—Fewer than twenty-five employees.
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48.46.230	Repealed.
48.46.235	Minimum net worth—Requirement to maintain—Determination of amount.
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48.46.243	Contract—Participant liability—Commissioner's review.
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48.46.247	Insolvency—Commissioner's duties—Participants' options—Allocation of coverage.
48.46.350	Chemical dependency treatment.
48.46.420	Penalty for violations.
48.46.540	Nonresident pharmacies.

48.46.020 Definitions. As used in this chapter, the terms defined in this section shall have the meanings indicated unless the context indicates otherwise.

(1) "Health maintenance organization" means any organization receiving a certificate of registration by the commissioner under this chapter which provides comprehensive health care services to enrolled participants of such organization on a group practice per capita prepayment basis or on a prepaid individual practice plan, except for an enrolled participant's responsibility for copayments and/or deductibles, either directly or through contractual or other arrangements with other institutions, entities, or persons, and which qualifies as a health maintenance organization pursuant to RCW 48.46.030 and 48.46.040.

(2) "Comprehensive health care services" means basic consultative, diagnostic, and therapeutic services rendered by licensed health professionals together with emergency and preventive care, inpatient hospital, outpatient and physician care, at a minimum, and any additional health care services offered by the health maintenance organization.

(3) "Enrolled participant" means a person who or group of persons which has entered into a contractual arrangement or on whose behalf a contractual arrangement has been entered into with a health maintenance organization to receive health care services.

(4) "Health professionals" means health care practitioners who are regulated by the state of Washington.

(5) "Health maintenance agreement" means an agreement for services between a health maintenance

organization which is registered pursuant to the provisions of this chapter and enrolled participants of such organization which provides enrolled participants with comprehensive health services rendered to enrolled participants by health professionals, groups, facilities, and other personnel associated with the health maintenance organization.

(6) "Consumer" means any member, subscriber, enrollee, beneficiary, or other person entitled to health care services under terms of a health maintenance agreement, but not including health professionals, employees of health maintenance organizations, partners, or shareholders of stock corporations licensed as health maintenance organizations.

(7) "Meaningful role in policy making" means a procedure approved by the commissioner which provides consumers or elected representatives of consumers a means of submitting the views and recommendations of such consumers to the governing board of such organization coupled with reasonable assurance that the board will give regard to such views and recommendations.

(8) "Meaningful grievance procedure" means a procedure for investigation of consumer grievances in a timely manner aimed at mutual agreement for settlement according to procedures approved by the commissioner, and which may include arbitration procedures.

(9) "Provider" means any health professional, hospital, or other institution, organization, or person that furnishes any health care services and is licensed or otherwise authorized to furnish such services.

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

(11) "Commissioner" means the insurance commissioner.

(12) "Group practice" means a partnership, association, corporation, or other group of health professionals:

(a) The members of which may be individual health professionals, clinics, or both individuals and clinics who engage in the coordinated practice of their profession; and

(b) The members of which are compensated by a pre-arranged salary, or by capitation payment or drawing account that is based on the number of enrolled participants.

(13) "Individual practice health care plan" means an association of health professionals in private practice who associate for the purpose of providing prepaid comprehensive health care services on a fee-for-service or capitation basis.

(14) "Uncovered expenditures" means the costs to the health maintenance organization of health care services that are the obligation of the health maintenance organization for which an enrolled participant would also be liable in the event of the health maintenance organization's insolvency and for which no alternative arrangements have been made as provided herein. The term does not include expenditures for covered services when a provider has agreed not to bill the enrolled participant even though the provider is not paid by the health maintenance organization, or for services that are guaranteed,

insured, or assumed by a person or organization other than the health maintenance organization.

(15) "Copayment" means an amount specified in a subscriber agreement which is an obligation of an enrolled participant for a specific service which is not fully prepaid.

(16) "Deductible" means the amount an enrolled participant is responsible to pay out-of-pocket before the health maintenance organization begins to pay the costs associated with treatment.

(17) "Fully subordinated debt" means those debts that meet the requirements of RCW 48.46.235(3) and are recorded as equity.

(18) "Net worth" means the excess of total admitted assets as defined in RCW 48.12.010 over total liabilities but the liabilities shall not include fully subordinated debt.

(19) "Participating provider" means a provider as defined in subsection (9) of this section who contracts with the health maintenance organization or with its contractor or subcontractor and has agreed to provide health care services to enrolled participants with an expectation of receiving payment, other than copayment or deductible, directly or indirectly, from the health maintenance organization.

(20) "Carrier" means a health maintenance organization, an insurer, a health care services contractor, or other entity responsible for the payment of benefits or provision of services under a group or individual agreement.

(21) "Replacement coverage" means the benefits provided by a succeeding carrier.

(22) "Insolvent" or "insolvency" means that the organization has been declared insolvent and is placed under an order of liquidation by a court of competent jurisdiction. [1990 c 119 § 1; 1983 c 106 § 1; 1982 c 151 § 1; 1975 1st ex.s. c 290 § 3.]

Effective date—1982 c 151: "This act shall take effect on January 1, 1983." [1982 c 151 § 5.]

48.46.030 Eligibility requirements for certificate of registration—Application requirements, information. Any corporation, cooperative group, partnership, individual, association, or groups of health professionals licensed by the state of Washington, public hospital district, or public institutions of higher education shall be entitled to a certificate of registration from the insurance commissioner as a health maintenance organization if it:

(1) Provides comprehensive health care services to enrolled participants on a group practice per capita prepayment basis or on a prepaid individual practice plan and provides such health services either directly or through arrangements with institutions, entities, and persons which its enrolled population might reasonably require as determined by the health maintenance organization in order to be maintained in good health; and

(2) Is governed by a board elected by enrolled participants, or otherwise provides its enrolled participants with a meaningful role in policy making procedures of

such organization, as defined in RCW 48.46.020(7), and 48.46.070; and

(3) Affords enrolled participants with a meaningful grievance procedure aimed at settlement of disputes between such persons and such health maintenance organization, as defined in RCW 48.46.020(8) and 48.46.100; and

(4) Provides enrolled participants, or makes available for inspection at least annually, financial statements pertaining to health maintenance agreements, disclosing income and expenses, assets and liabilities, and the bases for proposed rate adjustments for health maintenance agreements relating to its activity as a health maintenance organization; and

(5) Demonstrates to the satisfaction of the commissioner that its facilities and personnel are reasonably adequate to provide comprehensive health care services to enrolled participants and that it is financially capable of providing such members with, or has made adequate contractual arrangements through insurance or otherwise to provide such members with, such health services; and

(6) Substantially complies with administrative rules and regulations of the commissioner for purposes of this chapter; and

(7) Submits an application for a certificate of registration which shall be verified by an officer or authorized representative of the applicant, being in form as the commissioner prescribes, and setting forth:

(a) A copy of the basic organizational document, if any, of the applicant, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto;

(b) A copy of the bylaws, rules and regulations, or similar documents, if any, which regulate the conduct of the internal affairs of the applicant, and all amendments thereto;

(c) A list of the names, addresses, members of the board of directors, board of trustees, executive committee, or other governing board or committee and the principal officers, partners, or members;

(d) A full and complete disclosure of any financial interests held by any officer, or director in any provider associated with the applicant or any provider of the applicant;

(e) A description of the health maintenance organization, its facilities and its personnel, and the applicant's most recent financial statement showing such organization's assets, liabilities, income, and other sources of financial support;

(f) A description of the geographic areas and the population groups to be served and the size and composition of the anticipated enrollee population;

(g) A copy of each type of health maintenance agreement to be issued to enrolled participants;

(h) A schedule of all proposed rates of reimbursement to contracting health care facilities or providers, if any, and a schedule of the proposed charges for enrollee coverage for health care services, accompanied by data relevant to the formulation of such schedules;

(i) A description of the proposed method and schedule for soliciting enrollment in the applicant health maintenance organization and the basis of compensation for such solicitation services;

(j) A copy of the solicitation document to be distributed to all prospective enrolled participants in connection with any solicitation;

(k) A financial projection which sets forth the anticipated results during the initial two years of operation of such organization, accompanied by a summary of the assumptions and relevant data upon which the projection is based. The projection should include the projected expenses, enrollment trends, income, enrollee utilization patterns, and sources of working capital;

(l) A detailed description of the enrollee complaint system as provided by RCW 48.46.100;

(m) A detailed description of the procedures and programs to be implemented to assure that the health care services delivered to enrolled participants will be of professional quality;

(n) A detailed description of procedures to be implemented to meet the requirements to protect against insolvency in RCW 48.46.245;

(o) Documentation that the health maintenance organization has an initial net worth of one million dollars and shall thereafter maintain the minimum net worth required under RCW 48.46.235; and

(p) Such other information as the commissioner shall require by rule or regulation which is reasonably necessary to carry out the provisions of this section.

A health maintenance organization shall, unless otherwise provided for in this chapter, file a notice describing any modification of any of the information required by subsection (7) of this section. Such notice shall be filed with the commissioner. [1990 c 119 § 2; 1985 c 320 § 1; 1983 c 106 § 2; 1975 1st ex.s. c 290 § 4.]

48.46.040 Certificate of registration—Issuance—Grounds for refusal—Name restrictions—Inspection and review of facilities. The commissioner shall issue a certificate of registration to the applicant within sixty days of such filing unless he notifies the applicant within such time that such application is not complete and the reasons therefor; or that he is not satisfied that:

(1) The basic organizational document of the applicant permits the applicant to conduct business as a health maintenance organization;

(2) The organization has demonstrated the intent and ability to assure that comprehensive health care services will be provided in a manner to assure both their availability and accessibility;

(3) The organization is financially responsible and may be reasonably expected to meet its obligations to its enrolled participants. In making this determination, the commissioner shall consider among other relevant factors:

(a) Any agreements with an insurer, a medical or hospital service bureau, a government agency or any other organization paying or insuring payment for health care services;

(b) Any agreements with providers for the provision of health care services;

(c) Any arrangements for liability and malpractice insurance coverage; and

(d) Adequate procedures to be implemented to meet the protection against insolvency requirements in RCW 48.46.245.

(4) The procedures for offering health care services and offering or terminating contracts with enrolled participants are reasonable and equitable in comparison with prevailing health insurance subscription practices and health maintenance organization enrollment procedures; and, that

(5) Procedures have been established to:

(a) Monitor the quality of care provided by such organization, including, as a minimum, procedures for internal peer review;

(b) Resolve complaints and grievances initiated by enrolled participants in accordance with RCW 48.46.010 and 48.46.100;

(c) Offer enrolled participants an opportunity to participate in matters of policy and operation in accordance with RCW 48.46.020(7) and 48.46.070.

No person to whom a certificate of registration has not been issued, except a health maintenance organization certified by the secretary of the department of health and human services, pursuant to Public Law 93-222 or its successor, shall use the words "health maintenance organization" or the initials "HMO" in its name, contracts, or literature. Persons who are contracting with, operating in association with, recruiting enrolled participants for, or otherwise authorized by a health maintenance organization possessing a certificate of registration to act on its behalf may use the terms "health maintenance organization" or "HMO" for the limited purpose of denoting or explaining their relationship to such health maintenance organization.

The department of health, at the request of the insurance commissioner, shall inspect and review the facilities of every applicant health maintenance organization to determine that such facilities are reasonably adequate to provide the health care services offered in their contracts. If the commissioner has information to indicate that such facilities fail to continue to be adequate to provide the health care services offered, the department of health, upon request of the insurance commissioner, shall reinspect and review the facilities and report to the insurance commissioner as to their adequacy or inadequacy. [1990 c 119 § 3; 1989 1st ex.s. c 9 § 223; 1983 c 106 § 3; 1975 1st ex.s. c 290 § 5.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

48.46.066 Basic health maintenance agreement—Fewer than twenty-five employees. A basic health maintenance agreement may be offered to employers of fewer than twenty-five employees. Such a basic health maintenance agreement shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to

the requirements of RCW 48.46.275, 48.46.280, 48.46-.285, 48.46.290, 48.46.350, 48.46.355, 48.46.375, 48.46-.440, 48.46.480, 48.46.510, 48.46.520, and 48.46.530.

Nothing in this section shall prohibit an insurer from offering, or a purchaser from seeking, benefits in excess of the basic coverage authorized herein. All forms, policies, and contracts shall be submitted for approval to the commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

The policy authorized by this section shall not supplant or supersede any existing policy for the benefit of employees in this state. Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein. [1990 c 187 § 4.]

Finding—Intent—Severability—1990 c 187: See notes following RCW 48.21.045.

48.46.225 Financial failure—Supervision of commissioner—Priority of distribution of assets. (1) Any rehabilitation, liquidation, or conservation of a health maintenance organization shall be deemed to be the rehabilitation, liquidation, or conservation of an insurance company and shall be conducted under the supervision of the commissioner pursuant to the law governing the rehabilitation, liquidation, or conservation of insurance companies. The commissioner may apply for an order directing the commissioner to rehabilitate, liquidate, or conserve a health maintenance organization upon any one or more grounds set out in RCW 48.31.030, 48.31-.050, and 48.31.080. Enrolled participants shall have the same priority in the event of liquidation or rehabilitation as the law provides to policyholders of an insurer.

(2) For purposes of determining the priority of distribution of general assets, claims of enrolled participants and enrolled participants' beneficiaries shall have the same priority as established by RCW 48.31.280 for policyholders and beneficiaries of insureds of insurance companies. If an enrolled participant is liable to any provider for services provided pursuant to and covered by the health maintenance agreement, that liability shall have the status of an enrolled participant claim for distribution of general assets.

(3) A provider who is obligated by statute or agreement to hold enrolled participants harmless from liability for services provided pursuant to and covered by a health care plan shall have a priority of distribution of the general assets immediately following that of enrolled participants and enrolled participants' beneficiaries as described herein, and immediately preceding the priority of distribution described in RCW 48.31.280(2)(e). [1990 c 119 § 4.]

48.46.230 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

48.46.235 Minimum net worth—Requirement to maintain—Determination of amount. (1) Except as provided in subsection (2) of this section, every health

maintenance organization must maintain a minimum net worth equal to the greater of:

(a) One million dollars; or

(b) Two percent of annual premium revenues as reported on the most recent annual financial statement filed with the commissioner on the first one hundred fifty million dollars of premium and one percent of annual premium on the premium in excess of one hundred fifty million dollars; or

(c) An amount equal to the sum of three months' uncovered expenditures as reported on the most recent financial statement filed with the commissioner.

(2) A health maintenance organization registered before June 7, 1990, must maintain a minimum net worth of:

(a) Twenty-five percent of the amount required by subsection (1) of this section by December 31, 1990;

(b) Fifty percent of the amount required by subsection (1) of this section by December 31, 1991;

(c) Seventy-five percent of the amount required by subsection (1) of this section by December 31, 1992; and

(d) One hundred percent of the amount required by subsection (1) of this section by December 31, 1993.

(3)(a) In determining net worth, no debt shall be considered fully subordinated unless the subordination clause is in a form acceptable to the commissioner. An interest obligation relating to the repayment of a subordinated debt must be similarly subordinated.

(b) The interest expenses relating to the repayment of a fully subordinated debt shall not be considered uncovered expenditures.

(c) A subordinated debt incurred by a note meeting the requirement of this section, and otherwise acceptable to the commissioner, shall not be considered a liability and shall be recorded as equity.

(4) Every health maintenance organization shall, when determining liabilities, include an amount estimated in the aggregate to provide for any unearned premium and for the payment of all claims for health care expenditures that have been incurred, whether reported or unreported, which are unpaid and for which such organization is or may be liable, and to provide for the expense of adjustment or settlement of such claims.

Such liabilities shall be computed in accordance with rules promulgated by the commissioner upon reasonable consideration of the ascertained experience and character of the health maintenance organization. [1990 c 119 § 5.]

48.46.240 Funded reserve requirements. (1) Each health maintenance organization obtaining a certificate of registration from the commissioner shall provide and maintain a funded reserve of one hundred fifty thousand dollars. The funded reserve shall be deposited with the commissioner or with any organization/trustee acceptable to him in the form of cash, securities eligible for investment by the health maintenance organization pursuant to chapter 48.13 RCW, approved surety bond or any combination of these, and must equal or exceed one hundred fifty thousand dollars. The funded reserve shall

be established as an assurance that the uncovered expenditure obligations of the health maintenance organization to the enrolled participants will be performed.

(2) All income from reserves on deposit with the commissioner shall belong to the depositing health maintenance organization and shall be paid to it as it becomes available.

(3) Any funded reserve required by this section shall be considered an asset of the health maintenance organization in determining the organization's net worth.

(4) A health maintenance organization that has made a securities deposit with the commissioner may, at its option, withdraw the securities deposit or any part of the deposit after first having deposited or provided in lieu thereof an approved surety bond, a deposit of cash or securities, or any combination of these or other deposits of equal amount and value to that withdrawn. Any securities and surety bond shall be subject to approval by the commissioner before being substituted. [1990 c 119 § 6; 1985 c 320 § 4; 1982 c 151 § 3.]

Effective date—1982 c 151: See note following RCW 48.46.020.

48.46.243 Contract—Participant liability—Commissioner's review. (1) Subject to subsection (2) of this section, every contract between a health maintenance organization and its participating providers of health care services shall be in writing and shall set forth that in the event the health maintenance organization fails to pay for health care services as set forth in the agreement, the enrolled participant shall not be liable to the provider for any sums owed by the health maintenance organization. Every such contract shall provide that this requirement shall survive termination of the contract.

(2) The provisions of subsection (1) of this section shall not apply to emergency care from a provider who is not a participating provider, to out-of-area services or, in exceptional situations approved in advance by the commissioner, if the health maintenance organization is unable to negotiate reasonable and cost-effective participating provider contracts.

(3)(a) Each participating provider contract form shall be filed with the commissioner fifteen days before it is used.

(b) Any contract form not affirmatively disapproved within fifteen days of filing shall be deemed approved, except that the commissioner may extend the approval period an additional fifteen days upon giving notice before the expiration of the initial fifteen-day period. The commissioner may approve such a contract form for immediate use at any time. Approval may be subsequently withdrawn for cause.

(c) Subject to the right of the health maintenance organization to demand and receive a hearing under chapters 48.04 and 34.05 RCW, the commissioner may disapprove such a contract form if it is in any respect in violation of this chapter or if it fails to conform to minimum provisions or standards required by the commissioner by rule under chapter 34.05 RCW.

(4) No participating provider, or agent, trustee, or assignee thereof, may maintain an action against an enrolled participant to collect sums owed by the health maintenance organization. [1990 c 119 § 7.]

48.46.245 Plan for handling insolvency—Commissioner's review. Each health maintenance organization shall have a plan for handling insolvency which allows for continuation of benefits for the duration of the agreement period for which premiums have been paid and continuation of benefits to members who are confined on the date of insolvency in an inpatient facility until their discharge or expiration of benefits. The commissioner shall approve such a plan if it includes:

(1) Insurance to cover the expenses to be paid for continued benefits after insolvency;

(2) Provisions in provider contracts that obligate the provider to provide services for the duration of the period after the health maintenance organization's insolvency for which premium payment has been made and until the enrolled participants' discharge from inpatient facilities;

(3) Use of insolvency reserves established under RCW 48.46.240;

(4) Acceptable letters of credit or approved surety bonds; or

(5) Any other arrangements the commissioner and the organization mutually agree are appropriate to assure that benefits are continued. [1990 c 119 § 8.]

48.46.247 Insolvency—Commissioner's duties—Participants' options—Allocation of coverage. (1)(a) In the event of insolvency of a health care service contractor or health maintenance organization and upon order of the commissioner, all other carriers then having active enrolled participants under a group plan with the affected agreement holder that participated in the enrollment process with the insolvent health care service contractor or health maintenance organization at a group's last regular enrollment period shall offer the eligible enrolled participants of the insolvent health services contractor or health maintenance organization the opportunity to enroll in an existing group plan without medical underwriting during a thirty-day open enrollment period, commencing on the date of the insolvency. Eligible enrolled participants shall not be subject to preexisting condition limitations except to the extent that a waiting period for a preexisting condition has not been satisfied under the insolvent carrier's group plan. An open enrollment shall not be required where the agreement holder participates in a self-insured, self-funded, or other health plan exempt from commissioner rule, unless the plan administrator and agreement holder voluntarily agree to offer a simultaneous open enrollment and extend coverage under the same enrollment terms and conditions as are applicable to carriers under this title and rules adopted under this title. If an exempt plan was offered during the last regular open enrollment period, then the carrier may offer the agreement holder the

same coverage as any self-insured plan or plans offered by the agreement holder without regard to coverage, benefit, or provider requirements mandated by this title for the duration of the current agreement period.

(b) For purposes of this subsection only, the term "carrier" means a health maintenance organization or a health care service contractor. In the event of insolvency of a carrier and if no other carrier has active enrolled participants under a group plan with the affected agreement holder, or if the commissioner determines that the other carriers lack sufficient health care delivery resources to assure that health services will be available or accessible to all of the group enrollees of the insolvent carrier, then the commissioner shall allocate equitably the insolvent carrier's group agreements for these groups among all carriers that operate within a portion of the insolvent carrier's area, taking into consideration the health care delivery resources of each carrier. Each carrier to which a group or groups are allocated shall offer the agreement holder, without medical underwriting, the carrier's existing coverage that is most similar to each group's coverage with the insolvent carrier at rates determined in accordance with the successor carrier's existing rating methodology. The eligible enrolled participants shall not be subject to preexisting condition limitations except to the extent that a waiting period for a preexisting condition has not been satisfied under the insolvent carrier's group plan. No offering by a carrier shall be required where the agreement holder participates in a self-insured, self-funded, or other health plan exempt from commissioner rule. The carrier may offer the agreement holder the same coverage as any self-insured plan or plans offered by the agreement holder without regard to coverage, benefit, or provider requirements mandated by this title for the duration of the current agreement period.

(2) The commissioner shall also allocate equitably the insolvent carrier's nongroup enrolled participants who are unable to obtain coverage among all carriers that operate within a portion of the insolvent carrier's service area, taking into consideration the health care delivery resources of the carrier. Each carrier to which nongroup enrolled participants are allocated shall offer the nongroup enrolled participants the carrier's existing comprehensive conversion plan, without additional medical underwriting, at rates determined in accordance with the successor carrier's existing rating methodology. The eligible enrolled participants shall not be subject to preexisting condition limitations except to the extent that a waiting period for a preexisting condition has not been satisfied under the insolvent carrier's plan.

(3) Any agreements covering participants allocated pursuant to subsections (1)(b) and (2) of this section to carriers pursuant to this section may be rerated after ninety days of coverage.

(4) A limited health care service contractor shall not be required to offer services other than its one limited health care service to any enrolled participant of an insolvent carrier. [1990 c 119 § 9.]

48.46.350 Chemical dependency treatment. Each group agreement for health care services that is delivered or issued for delivery or renewed on or after January 1, 1988, shall contain provisions providing benefits for the treatment of chemical dependency rendered to covered persons by a provider which is an "approved treatment facility or program" under *RCW 70.96A.020(3); PROVIDED, That this section does not apply to any agreement written as supplemental coverage to any federal or state programs of health care including, but not limited to, Title XVIII health insurance for the aged (commonly referred to as Medicare, Parts A&B), and amendments thereto. Treatment shall be covered under the chemical dependency coverage if treatment is rendered by the health maintenance organization or if the health maintenance organization refers the enrolled participant or the enrolled participant's dependents to a physician licensed under chapter 18.57 or 18.71 RCW, or to a qualified counselor employed by an approved treatment facility or program described in *RCW 70.96A.020(3). In all cases, a health maintenance organization shall retain the right to diagnose the presence of chemical dependency and select the modality of treatment that best serves the interest of the health maintenance organization's enrolled participant, or the enrolled participant's covered dependent. [1990 1st ex.s. c 3 § 14; 1987 c 458 § 18; 1983 c 106 § 13.]

*Reviser's note: RCW 70.96A.020(3) defines "approved treatment program."

Effective date—Severability—1987 c 458: See notes following RCW 48.21.160.

Chemical dependency benefits, rules: RCW 48.21.197.

48.46.420 Penalty for violations. (1) Any health maintenance organization which, or person who, violates any provision of this chapter shall be guilty of a gross misdemeanor.

(2) A health maintenance organization that fails to comply with the net worth requirements of this chapter must cure that defect in compliance with an order of the commissioner rendered in conformity with rules adopted pursuant to chapter 34.05 RCW. The commissioner is authorized to take appropriate action to assure that the continued operation of the health maintenance organization will not be hazardous to its enrolled participants. [1990 c 119 § 10; 1983 c 106 § 20.]

48.46.540 Nonresident pharmacies. For the purposes of this chapter, a nonresident pharmacy is defined as any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an enrolled participant or his/her representative, controlled substances, legend drugs, or devices into this state.

After October 1, 1991, a health maintenance organization providing coverage of prescription drugs from nonresident pharmacies may only provide coverage from licensed nonresident pharmacies. The health maintenance organizations shall obtain proof of current licensure in conformity with this section and RCW 18.64.350

through 18.64.400 from the nonresident pharmacy and keep that proof of licensure on file.

The department may request from the health maintenance organization the proof of current licensure for all nonresident pharmacies through which the insurer is providing coverage for prescription drugs for residents of the state of Washington. This information, which may constitute a full or partial customer list, shall be confidential and exempt from public disclosure, and from the requirements of chapter 42.17 RCW. The board or the department shall not be restricted in the disclosure of the name of a nonresident pharmacy that is or has been licensed under RCW 18.64.360 or 18.64.370 or of the identity of a nonresident pharmacy disciplined under RCW 18.64.350 through 18.64.400. [1991 c 87 § 10.]

Effective date—1991 c 87: See note following RCW 18.64.350.

Chapter 48.48

STATE FIRE PROTECTION

(Formerly: State fire marshal)

Sections

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| 48.48.045 | Schools—Standards for fire prevention and safety—Plan reviews and construction inspections. |
| 48.48.140 | Smoke detection devices in dwelling units—Penalty. |

48.48.045 Schools—Standards for fire prevention and safety—Plan reviews and construction inspections. Nonconstruction standards relative to fire prevention and safety for all schools under the jurisdiction of the superintendent of public instruction and state board of education shall be established by the state fire protection board. The director of fire protection shall make or cause to be made plan reviews and construction inspections for all E-1 occupancies as may be necessary to insure compliance with the state building code and standards for schools adopted under chapter 19.27 RCW. Nothing in this section prohibits the director of fire protection from delegating construction inspection authority to any local jurisdiction. [1991 c 170 § 2; 1986 c 266 § 69; 1985 c 470 § 19; 1981 c 198 § 3; 1972 ex.s. c 70 § 1.]

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

48.48.140 Smoke detection devices in dwelling units—Penalty. (1) Smoke detection devices shall be installed inside all dwelling units:

(a) Occupied by persons other than the owner on and after December 31, 1981; or

(b) Built or manufactured in this state after December 31, 1980.

(2) The smoke detection devices shall be designed, manufactured, and installed inside dwelling units in conformance with:

(a) Nationally accepted standards; and

(b) As provided by the administrative procedure act, chapter 34.05 RCW, rules and regulations promulgated by the director of community development, through the director of fire protection.

(3) Installation of smoke detection devices shall be the responsibility of the owner. Maintenance of smoke detection devices, including the replacement of batteries where required for the proper operation of the smoke detection device, shall be the responsibility of the tenant, who shall maintain the device as specified by the manufacturer. At the time of a vacancy, the owner shall insure that the smoke detection device is operational prior to the reoccupancy of the dwelling unit.

(4) Any owner or tenant failing to comply with this section shall be punished by a fine of not more than two hundred dollars.

(5) For the purposes of this section:

(a) "Dwelling unit" means a single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation; and

(b) "Smoke detection device" means an assembly incorporating in one unit a device which detects visible or invisible particles of combustion, the control equipment, and the alarm-sounding device, operated from a power supply either in the unit or obtained at the point of installation. [1991 c 154 § 1; 1986 c 266 § 89; 1980 c 50 § 1.]

Severability—1986 c 266: See note following RCW 38.52.005.

Chapter 48.62

LOCAL GOVERNMENT INSURANCE TRANSACTIONS

Sections

48.62.010	Repealed. (Effective January 1, 1992.)
48.62.011	Legislative intent—Construction. (Effective January 1, 1992.)
48.62.020	Repealed. (Effective January 1, 1992.)
48.62.021	Definitions. (Effective January 1, 1992.)
48.62.030	Repealed. (Effective January 1, 1992.)
48.62.031	Authority to self-insure—Options—Risk manager. (Effective January 1, 1992.)
48.62.035	Repealed. (Effective January 1, 1992.)
48.62.040	Repealed. (Effective January 1, 1992.)
48.62.041	Property and liability advisory board—Creation—Membership—Duties. (Effective January 1, 1992.)
48.62.050	Repealed. (Effective January 1, 1992.)
48.62.051	Health and welfare advisory board—Creation—Membership—Duties. (Effective January 1, 1992.)
48.62.060	Repealed. (Effective January 1, 1992.)
48.62.061	Rulemaking by state risk manager—Standards. (Effective January 1, 1992.)
48.62.070	Repealed. (Effective January 1, 1992.)
48.62.071	Program approval required—State risk manager—Plan of management and operation. (Effective January 1, 1992.)
48.62.080	Repealed. (Effective January 1, 1992.)
48.62.081	Multistate program participants—Requirements. (Effective January 1, 1992.)
48.62.090	Repealed. (Effective January 1, 1992.)
48.62.091	Program approval or disapproval—Procedures—Annual report. (Effective January 1, 1992.)
48.62.100	Repealed. (Effective January 1, 1992.)
48.62.101	Access to information—Executive sessions—Public disclosure act. (Effective January 1, 1992.)
48.62.110	Repealed. (Effective January 1, 1992.)
48.62.111	Investments—Designated treasurer—Deposit requirements—Bond. (Effective January 1, 1992.)
48.62.120	Repealed. (Effective January 1, 1992.)

48.62.121	General operating regulations—Employee remuneration—Governing control—School districts—Use of agents and brokers—Health care services. (Effective January 1, 1992.)
48.62.125	Educational service districts—Rules—Superintendent of public instruction. (Effective January 1, 1992.)
48.62.131	Preexisting programs—Notice to state auditor. (Effective January 1, 1992.)
48.62.141	Insufficient assets—Program requirement. (Effective January 1, 1992.)
48.62.151	Insurance premium taxes—Exemption. (Effective January 1, 1992.)
48.62.161	Establishment of fee to cover costs—Boards—State risk manager. (Effective January 1, 1992.)
48.62.171	Dissemination of information—Civil immunity. (Effective January 1, 1992.)
48.62.900	Effective date, implementation, application—1991 1st sp.s. c 30.
48.62.901	Severability—1991 1st sp.s. c 30.

48.62.010 Repealed. (Effective January 1, 1992.)
See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

48.62.011 Legislative intent—Construction. (Effective January 1, 1992.) This chapter is intended to provide the exclusive source of local government entity authority to individually or jointly self-insure risks, jointly purchase insurance or reinsurance, and to contract for risk management, claims, and administrative services. This chapter shall be liberally construed to grant local government entities maximum flexibility in self-insuring to the extent the self-insurance programs are operated in a safe and sound manner. This chapter is intended to require prior approval for the establishment of every individual local government self-insured employee health and welfare benefit program and every joint local government self-insurance program. In addition, this chapter is intended to require every local government entity that establishes a self-insurance program not subject to prior approval to notify the state of the existence of the program and to comply with the regulatory and statutory standards governing the management and operation of the programs as provided in this chapter. This chapter is not intended to authorize or regulate self-insurance of unemployment compensation under chapter 50.44 RCW, or industrial insurance under chapter 51.14 RCW. [1991 1st sp.s. c 30 § 1.]

48.62.020 Repealed. (Effective January 1, 1992.)
See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

48.62.021 Definitions. (Effective January 1, 1992.)
Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Local government entity" or "entity" means every unit of local government, both general purpose and special purpose, and includes, but is not limited to, counties, cities, towns, port districts, public utility districts, water districts, sewer districts, school districts, fire protection districts, irrigation districts, metropolitan municipal corporations, conservation districts, and other

political subdivisions, governmental subdivisions, municipal corporations, and quasi-municipal corporations.

(2) "Risk assumption" means a decision to absorb the entity's financial exposure to a risk of loss without the creation of a formal program of advance funding of anticipated losses.

(3) "Self-insurance" means a formal program of advance funding and management of entity financial exposure to a risk of loss that is not transferred through the purchase of an insurance policy or contract.

(4) "Health and welfare benefits" means a plan or program established by a local government entity or entities for the purpose of providing its employees and their dependents, and in the case of school districts, its district employees, students, directors, or any of their dependents, with health care, accident, disability, death, and salary protection benefits.

(5) "Property and liability risks" includes the risk of property damage or loss sustained by a local government entity and the risk of claims arising from the tortious or negligent conduct or any error or omission of the local government entity, its officers, employees, agents, or volunteers as a result of which a claim may be made against the local government entity.

(6) "State risk manager" means the state risk manager of the division of risk management within the department of general administration. [1991 1st sp.s. c 30 § 2.]

48.62.030 Repealed. (Effective January 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

48.62.031 Authority to self-insure—Options—Risk manager. (Effective January 1, 1992.) (1) The governing body of a local government entity may individually self-insure, may join or form a self-insurance program together with other entities, and may jointly purchase insurance or reinsurance with other entities for property and liability risks, and health and welfare benefits only as permitted under this chapter. In addition, the entity or entities may contract for or hire personnel to provide risk management, claims, and administrative services in accordance with this chapter.

(2) The agreement to form a joint self-insurance program shall be made under chapter 39.34 RCW.

(3) Every individual and joint self-insurance program is subject to audit by the state auditor.

(4) If provided for in the agreement or contract established under chapter 39.34 RCW, a joint self-insurance program may, in conformance with this chapter:

(a) Contract or otherwise provide for risk management and loss control services;

(b) Contract or otherwise provide legal counsel for the defense of claims and other legal services;

(c) Consult with the state insurance commissioner and the state risk manager;

(d) Jointly purchase insurance and reinsurance coverage in such form and amount as the program's participants agree by contract; and

(e) Possess any other powers and perform all other functions reasonably necessary to carry out the purposes of this chapter.

(5) A local government entity that has decided to assume a risk of loss must have available for inspection by the state auditor a written report indicating the class of risk or risks the governing body of the entity has decided to assume.

(6) Every joint self-insurance program governed by this chapter shall appoint the risk manager as its attorney to receive service of, and upon whom shall be served, all legal process issued against it in this state upon causes of action arising in this state.

(a) Service upon the risk manager as attorney shall constitute service upon the program. Service upon joint insurance programs subject to chapter 30, Laws of 1991 1st sp. sess. can be had only by service upon the risk manager. At the time of service, the plaintiff shall pay to the risk manager a fee to be set by the risk manager, taxable as costs in the action.

(b) With the initial filing for approval with the risk manager, each joint self-insurance program shall designate by name and address the person to whom the risk manager shall forward legal process so served upon him or her. The joint self-insurance program may change such person by filing a new designation.

(c) The appointment of the risk manager as attorney shall be irrevocable, shall bind any successor in interest or to the assets or liabilities of the joint self-insurance program, and shall remain in effect as long as there is in force in this state any contract made by the joint self-insurance program or liabilities or duties arising therefrom.

(d) The risk manager shall keep a record of the day and hour of service upon him or her of all legal process. A copy of the process, by registered mail with return receipt requested, shall be sent by the risk manager, to the person designated for the purpose by the joint self-insurance program in its most recent such designation filed with the risk manager. No proceedings shall be had against the joint self-insurance program, and the program shall not be required to appear, plead, or answer, until the expiration of forty days after the date of service upon the risk manager. [1991 1st sp.s. c 30 § 3.]

48.62.035 Repealed. (Effective January 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

48.62.040 Repealed. (Effective January 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

48.62.041 Property and liability advisory board—Creation—Membership—Duties. (Effective January 1, 1992.) (1) The property and liability advisory board is created, consisting of the insurance commissioner and the state risk manager, or their designees, as ex officio members and five members appointed by the governor on the basis of their experience and knowledge

in matters pertaining to local government risk management, self-insurance, and management of joint self-insurance programs. The board shall include at least two representatives from individual property or liability self-insurance programs and at least two representatives from joint property or liability self-insurance programs.

(2) The board shall assist the state risk manager in:

(a) Adopting rules governing the operation and management of both individual and joint self-insurance programs covering liability and property risks;

(b) Reviewing and approving the creation of joint self-insurance programs covering property or liability risks;

(c) Reviewing annual reports filed by joint self-insurance programs covering property and liability risks and recommending that corrective action be taken by the programs when necessary; and

(d) Responding to concerns of the state auditor related to the management and operation of both individual and joint self-insurance programs covering liability or property risks.

(3) The board shall annually elect a chair and a vice-chair from its members. The board shall meet at least quarterly at such times as the state risk manager may fix. The board members who are appointed shall serve without compensation from the state but shall suffer no loss because of absence from their regular employment. Members of the board who are not public employees shall be compensated in accordance with RCW 43.03.240.

(4) A majority of the board constitutes a quorum for the transaction of business.

(5) The board shall keep public records of its proceedings. [1991 1st sp.s. c 30 § 4.]

48.62.050 Repealed. (Effective January 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

48.62.051 Health and welfare advisory board—Creation—Membership—Duties. (Effective January 1, 1992.) (1) The health and welfare advisory board is created consisting of the insurance commissioner and the state risk manager, or their designees, as ex officio members and six members appointed by the governor on the basis of their experience and knowledge pertaining to local government self-insured health and welfare benefits programs. The board shall include one city management representative; one county management representative; two management representatives from local government self-insured health and welfare programs; and two representatives of state-wide employee organizations representing local government employees.

(2) The board shall assist the state risk manager in:

(a) Adopting rules governing the operation and management of both individual and joint self-insured health and welfare benefits programs;

(b) Reviewing and approving the creation of both individual and joint self-insured health and welfare benefits programs;

(c) Reviewing annual reports filed by health and welfare benefits programs and in recommending that corrective action be taken by the programs when necessary; and

(d) Responding to concerns of the state auditor related to the management and operation of health and welfare benefits programs.

(3) The board shall annually elect a chair and a vice-chair from its members. The board shall meet at least quarterly at such times as the state risk manager may fix. The board members who are appointed shall serve without compensation from the state but shall suffer no loss because of absence from their regular employment. Members of the board who are not public employees shall be compensated in accordance with RCW 43.03.240.

(4) A majority of the board constitutes a quorum for the transaction of business.

(5) The board shall keep public records of its proceedings. [1991 1st sp.s. c 30 § 5.]

48.62.060 Repealed. (Effective January 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

48.62.061 Rulemaking by state risk manager—Standards. (Effective January 1, 1992.) The state risk manager, in consultation with the property and liability advisory board, shall adopt rules governing the management and operation of both individual and joint local government self-insurance programs covering property or liability risks. The state risk manager shall also adopt rules governing the management and operation of both individual and joint local government self-insured health and welfare benefits programs in consultation with the health and welfare benefits advisory board. All rules shall be appropriate for the type of program and class of risk covered. The state risk manager's rules shall include:

(1) Standards for the management, operation, and solvency of self-insurance programs, including the necessity and frequency of actuarial analyses and claims audits;

(2) Standards for claims management procedures; and

(3) Standards for contracts between self-insurance programs and private businesses including standards for contracts between third-party administrators and programs. [1991 1st sp.s. c 30 § 6.]

48.62.070 Repealed. (Effective January 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

48.62.071 Program approval required—State risk manager—Plan of management and operation. (Effective January 1, 1992.) Before the establishment of a joint self-insurance program covering property or liability risks by local government entities, or an individual or joint local government self-insured health and welfare benefits program, the entity or entities must obtain the

approval of the state risk manager. Risk manager approval is not required for the establishment of an individual local government self-insurance program covering property or liability risks. The entity or entities proposing creation of a self-insurance program requiring prior approval shall submit a plan of management and operation to the state risk manager and the state auditor that provides at least the following information:

(1) The risk or risks to be covered, including any coverage definitions, terms, conditions, and limitations or in the case of health and welfare benefits programs, the benefits to be provided, including any benefit definitions, terms, conditions, and limitations;

(2) The amount and method of financing the benefits or covered risks, including the initial capital and proposed rates and projected premiums;

(3) The proposed claim reserving practices;

(4) The proposed purchase and maintenance of insurance or reinsurance in excess of the amounts retained by the self-insurance program;

(5) In the case of a joint program, the legal form of the program, including but not limited to any bylaws, charter, or trust agreement;

(6) In the case of a joint program, the agreements with members of the program defining the responsibilities and benefits of each member and management;

(7) The proposed accounting, depositing, and investment practices of the program;

(8) The proposed time when actuarial analysis will be first conducted and the frequency of future actuarial analysis;

(9) A designation of the individual upon whom service of process shall be executed on behalf of the program. In the case of a joint program, a designation of the individual to whom service of process shall be forwarded by the risk manager on behalf of the program;

(10) All contracts between the program and private persons providing risk management, claims, or other administrative services;

(11) A professional analysis of the feasibility of creation and maintenance of the program; and

(12) Any other information required by rule of the state risk manager that is necessary to determine the probable financial and management success of the program or that is necessary to determine compliance with this chapter. [1991 1st sp.s. c 30 § 7.]

48.62.080 Repealed. (Effective January 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

48.62.081 Multistate program participants—Requirements. (Effective January 1, 1992.) A local government entity may participate in a joint self-insurance program covering property or liability risks with similar local government entities from other states if the program satisfies the following requirements:

(1) Only those local government entities of this state and similar entities of other states that are provided insurance by the program may have ownership interest in the program;

(2) The participating local government entities of this state and other states shall elect a board of directors to manage the program, a majority of whom shall be affiliated with one or more of the participating entities;

(3) The program must provide coverage through the delivery to each participating entity of one or more written policies effecting insurance of covered risks;

(4) The program shall be financed, including the payment of premiums and the contribution of initial capital, in accordance with the plan of management and operation submitted to the state risk manager in accordance with this chapter;

(5) The financial statements of the program shall be audited annually by the certified public accountants for the program, and such audited financial statements shall be delivered to the Washington state auditor and the state risk manager not more than one hundred twenty days after the end of each fiscal year of the program;

(6) The investments of the program shall be initiated only with financial institutions and/or broker-dealers doing business in those states in which participating entities are located, and such investments shall be audited annually by the certified public accountants for the program, and a list of such investments shall be delivered to the Washington state auditor not more than one hundred twenty days after the end of each fiscal year of the program;

(7) The treasurer of a multistate joint self-insurance program shall be designated by resolution of the program and such treasurer shall be located in the state of one of the participating entities;

(8) The participating entities may have no contingent liabilities for covered claims, other than liabilities for unpaid premiums, retrospective premiums, or assessments, if assets of the program are insufficient to cover the program's liabilities; and

(9) The program shall obtain approval from the state risk manager in accordance with this chapter and shall remain in compliance with the provisions of this chapter, except to the extent that such provisions are modified by or inconsistent with this section. [1991 1st sp.s. c 30 § 8.]

48.62.090 Repealed. (Effective January 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

48.62.091 Program approval or disapproval—Procedures—Annual report. (Effective January 1, 1992.) (1) Within one hundred twenty days of receipt of a plan of management and operation, the state risk manager shall either approve or disapprove the formation of the self-insurance program after reviewing the plan to determine whether the proposed program complies with this chapter and all rules adopted in accordance with this chapter.

(2) If the state risk manager denies a request for approval, the state risk manager shall specify in detail the reasons for denial and the manner in which the program fails to meet the requirements of this chapter or any rules adopted in accordance with this chapter.

(3) Whenever the state risk manager determines that a joint self-insurance program covering property or liability risks or an individual or joint self-insured health and welfare benefits program is in violation of this chapter or is operating in an unsafe financial condition, the state risk manager may issue and serve upon the program an order to cease and desist from the violation or practice.

(a) The state risk manager shall deliver the order to the appropriate entity or entities directly or mail it to the appropriate entity or entities by registered mail with return receipt requested.

(b) If the program violates the order or has not taken steps to comply with the order after the expiration of twenty days after the cease and desist order has been received by the program, the program is deemed to be operating in violation of this chapter, and the state risk manager shall notify the state auditor and the attorney general of the violation.

(c) After hearing or with the consent of a program governed by this chapter and in addition to or in lieu of a continuation of the cease and desist order, the risk manager may levy a fine upon the program in an amount not less than three hundred dollars and not more than ten thousand dollars. The order levying such fine shall specify the period within which the fine shall be fully paid. The period within which such fines shall be paid shall not be less than fifteen nor more than thirty days from the date of such order. Upon failure to pay any such fine when due the risk manager shall request the attorney general to bring a civil action on the risk manager's behalf to collect the fine. The risk manager shall pay any fine so collected to the state treasurer for the account of the general fund.

(4) Each self-insurance program approved by the state risk manager shall annually file a report with the state risk manager and state auditor providing:

(a) Details of any changes in the articles of incorporation, bylaws, or interlocal agreement;

(b) Copies of all the insurance coverage documents;

(c) A description of the program structure, including participants' retention, program retention, and excess insurance limits and attachment point;

(d) An actuarial analysis, if required;

(e) A list of contractors and service providers;

(f) The financial and loss experience of the program; and

(g) Such other information as required by rule of the state risk manager.

(5) No self-insurance program requiring the state risk manager's approval may engage in an act or practice that in any respect significantly differs from the management and operation plan that formed the basis for the state risk manager's approval of the program unless the program first notifies the state risk manager in writing and obtains the state risk manager's approval. The state risk manager shall approve or disapprove the proposed change within sixty days of receipt of the notice. If the state risk manager denies a requested change, the risk manager shall specify in detail the reasons for denial and the manner in which the program would fail to meet

the requirements of this chapter or any rules adopted in accordance with this chapter. [1991 1st sp.s. c 30 § 9.]

48.62.100 Repealed. (Effective January 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

48.62.101 Access to information—Executive sessions—Public disclosure act. (Effective January 1, 1992.) (1) All self-insurance programs governed by this chapter may provide for executive sessions in accordance with chapter 42.30 RCW to consider litigation and settlement of claims when it appears that public discussion of these matters would impair the program's ability to conduct its business effectively.

(2) Notwithstanding any provision to the contrary contained in the public disclosure act, chapter 42.17 RCW, in a claim or action against the state or a local government entity, no person is entitled to discover that portion of any funds or liability reserve established for purposes of satisfying a claim or cause of action, except that the reserve is discoverable in a supplemental or ancillary proceeding to enforce a judgment. All other records of individual or joint self-insurance programs are subject to disclosure in accordance with chapter 42.17 RCW.

(3) In accordance with chapter 42.17 RCW, bargaining groups representing local government employees shall have reasonable access to information concerning the experience and performance of any health and welfare benefits program established for the benefit of such employees. [1991 1st sp.s. c 30 § 10.]

48.62.110 Repealed. (Effective January 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

48.62.111 Investments—Designated treasurer—Deposit requirements—Bond. (Effective January 1, 1992.) (1) The assets of a joint self-insurance program governed by this chapter may be invested only in accordance with the general investment authority that participating local government entities possess as a governmental entity.

(2) Except as provided in subsection (3) of this section, a joint self-insurance program may invest all or a portion of its assets by depositing the assets with the treasurer of a county within whose territorial limits any of its member local government entities lie, to be invested by the treasurer for the joint program.

(3) Local government members of a joint self-insurance program may by resolution of the program designate some other person having experience in financial or fiscal matters as treasurer of the program, if that designated treasurer is located in Washington state. The program shall, unless the program's treasurer is a county treasurer, require a bond obtained from a surety company authorized to do business in Washington in an amount and under the terms and conditions that the program finds will protect against loss arising from mismanagement or malfeasance in investing and managing

program funds. The program may pay the premium on the bond.

All program funds must be paid to the treasurer and shall be disbursed by the treasurer only on warrants issued by the treasurer or a person appointed by the program and upon orders or vouchers approved by the program or as authorized under chapters 35A.40 and 42.24 RCW. The treasurer shall establish a program account, into which shall be recorded all program funds, and the treasurer shall maintain such special accounts as may be created by the program into which the treasurer shall record all money as the program may direct by resolution.

(4) The treasurer of the joint program shall deposit all program funds in a qualified public depository or depositories as defined in RCW 39.58.010(2) and under the same restrictions, contracts, and security as provided for any participating local government entity, and such depository shall be designated by resolution of the program.

(5) A joint self-insurance program may invest all or a portion of its assets by depositing the assets with the state investment board, to be invested by the state investment board in accordance with chapter 43.33A RCW. The state investment board shall designate a manager for those funds to whom the program may direct requests for disbursement upon orders or vouchers approved by the program or as authorized under chapters 35A.40 and 42.24 RCW.

(6) All interest and earnings collected on joint program funds belong to the program and must be deposited to the program's credit in the proper program account.

(7) A joint program may require a reasonable bond from any person handling money or securities of the program and may pay the premium for the bond.

(8) Subsections (3) and (4) of this section do not apply to a multistate joint self-insurance program governed by RCW 48.62.081. [1991 1st sp.s. c 30 § 11.]

48.62.120 Repealed. (Effective January 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

48.62.121 General operating regulations—Employee remuneration—Governing control—School districts—Use of agents and brokers—Health care services. (Effective January 1, 1992.) (1) No employee or official of a local government entity may directly or indirectly receive anything of value for services rendered in connection with the operation and management of a self-insurance program other than the salary and benefits provided by his or her employer or the reimbursement of expenses reasonably incurred in furtherance of the operation or management of the program. No employee or official of a local government entity may accept or solicit anything of value for personal benefit or for the benefit of others under circumstances in which it can be reasonably inferred that the employee's or official's independence of judgment is impaired with respect to the management and operation of the program.

(2) No local government entity may participate in a joint self-insurance program in which local government entities do not retain complete governing control. This prohibition does not apply to local government contribution to a self-insured employee health and welfare benefits plan otherwise authorized and governed by state statute nor to local government participation in a multistate joint program where control is shared with local government entities from other states.

(3) Moneys made available and moneys expended by school districts and educational service districts for self-insurance under this chapter are subject to such rules of the superintendent of public instruction as the superintendent may adopt governing budgeting and accounting. However, the superintendent shall ensure that the rules are consistent with those adopted by the state risk manager for the management and operation of self-insurance programs.

(4) RCW 48.30.140, 48.30.150, 48.30.155, and 48.30.157 apply to the use of agents and brokers by local government self-insurance programs.

(5) Every individual and joint local government self-insured health and welfare benefits program that provides comprehensive coverage for health care services shall include mandated benefits that the state health care authority is required to provide under RCW 41.05.170 and 41.05.180. The state risk manager may adopt rules identifying the mandated benefits. [1991 1st sp.s. c 30 § 12.]

48.62.125 Educational service districts—Rules—Superintendent of public instruction. (Effective January 1, 1992.) All rules adopted by the superintendent of public instruction by January 1, 1992, that apply to self-insurance programs of educational service districts remain in effect until expressly amended, repealed, or superseded by the state risk manager or the state health care authority. [1991 1st sp.s. c 30 § 31.]

48.62.131 Preexisting programs—Notice to state auditor. (Effective January 1, 1992.) Every local government entity that has established a self-insurance program not subject to the prior approval requirements of this chapter shall provide written notice to the state auditor of the existence of the program. The notice must identify the manager of the program and the class or classes of risk self-insured. The notice must also identify all investments and distribution of assets of the program, the current depository of assets and the program's designation of asset depository and investment agent as required by RCW 48.62.111. In addition, the local government entity shall notify the state auditor whenever the program covers a new class of risk or discontinues the self-insurance of a class of risk. [1991 1st sp.s. c 30 § 13.]

Application of chapter to preexisting programs: RCW 48.62.100.

48.62.141 Insufficient assets—Program requirement. (Effective January 1, 1992.) Every joint self-insurance program covering liability or property risks, excluding multistate programs governed by RCW

48.62.081, shall provide for the contingent liability of participants in the program if assets of the program are insufficient to cover the program's liabilities. [1991 1st sp.s. c 30 § 14.]

48.62.151 Insurance premium taxes—Exemption. (Effective January 1, 1992.) A joint self-insurance program approved in accordance with this chapter is exempt from insurance premium taxes, from fees assessed under chapter 48.02 RCW, from chapters 48.32 and 48.32A RCW, from business and occupations taxes imposed under chapter 82.04 RCW, and from any assigned risk plan or joint underwriting association otherwise required by law. This section does not apply to and no exemption is provided for insurance companies issuing policies to cover program risks, nor does it apply to or provide an exemption for third-party administrators or brokers serving the self-insurance program. [1991 1st sp.s. c 30 § 15.]

48.62.161 Establishment of fee to cover costs—Boards—State risk manager. (Effective January 1, 1992.) (1) The state risk manager shall establish and charge an investigation fee in an amount necessary to cover the costs for the initial review and approval of a self-insurance program. The fee must accompany the initial submission of the plan of operation and management.

(2) The costs of subsequent reviews and investigations shall be charged to the self-insurance program being reviewed or investigated in accordance with the actual time and expenses incurred in the review or investigation.

(3) After the formation of the two advisory boards, each board may calculate, levy, and collect from each joint property and liability self-insurance program and each individual and joint health and welfare benefit program regulated by this chapter a start-up assessment to pay initial expenses and operating costs of the boards and the risk manager's office in administering this chapter. Any program failing to remit its assessment when due is subject to denial of permission to operate or to a cease and desist order until the assessment is paid. [1991 1st sp.s. c 30 § 16.]

48.62.171 Dissemination of information—Civil immunity. (Effective January 1, 1992.) (1) Any person who files reports or furnishes other information required under Title 48 RCW, required by the risk manager or the state auditor under authority granted by Title 48 RCW, or which is useful to the risk manager or the state auditor in the administration of Title 48 RCW, shall be immune from liability in any civil action or suit arising from the filing of any such report or furnishing such information to the risk manager or to the state auditor, unless actual malice, fraud, or bad faith is shown.

(2) The risk manager and the state auditor, and the agents and employees of each, are immune from liability in any civil action or suit arising from the publication of any report or bulletins or arising from dissemination of information related to the official activities of the risk

manager, the advisory boards, or the state auditor, unless actual malice, fraud, or bad faith is shown.

(3) The immunity granted by this section is in addition to any common law or statutory privilege or immunity enjoyed by such person, and nothing in this section is intended to abrogate or modify in any way such common law or statutory privilege or immunity. [1991 1st sp.s. c 30 § 17.]

48.62.900 Effective date, implementation, application—1991 1st sp.s. c 30. (1) This act shall take effect January 1, 1992, but the state risk manager shall take all steps necessary to implement this act on its effective date.

(2) Every individual local government self-insured employee health and welfare plan and self-insurance program that has been in continuous operation for at least one year before January 1, 1992, need not obtain approval to continue operations until January 1, 1993, but must comply with all other provisions of this act.

(3) Local government entity authority to self-insure employee health and welfare benefits applies retroactively to 1979. [1991 1st sp.s. c 30 § 30.]

48.62.901 Severability—1991 1st sp.s. c 30. 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. [1991 1st sp.s. c 30 § 32.]

Chapter 48.66

MEDICARE SUPPLEMENTAL HEALTH INSURANCE ACT

Sections

48.66.165 Conformity with federal law—Rules.

48.66.165 Conformity with federal law—Rules. The commissioner may adopt, from time-to-time, such rules as are necessary with respect to medicare supplemental insurance to conform Washington policies, contracts, certificates, standards, and practices to the requirements of federal law, specifically including 42 U.S.C. Sec. 1395ss, and federal regulations adopted thereunder. [1991 c 120 § 1.]

Chapter 48.80

HEALTH CARE FALSE CLAIM ACT

Sections

48.80.030 Making false claims, concealing information—Penalty—Exclusions.

48.80.030 Making false claims, concealing information—Penalty—Exclusions. (1) A person shall not make or present or cause to be made or presented to a health care payer a claim for a health care payment knowing the claim to be false.

(2) No person shall knowingly present to a health care payer a claim for a health care payment that falsely

represents that the goods or services were medically necessary in accordance with professionally accepted standards. Each claim that violates this subsection shall constitute a separate offense.

(3) No person shall knowingly make a false statement or false representation of a material fact to a health care payer for use in determining rights to a health care payment. Each claim that violates this subsection shall constitute a separate violation.

(4) No person shall conceal the occurrence of any event affecting his or her initial or continued right under a contract, certificate, or policy of insurance to have a payment made by a health care payer for a specified health care service. A person shall not conceal or fail to disclose any information with intent to obtain a health care payment to which the person or any other person is not entitled, or to obtain a health care payment in an amount greater than that which the person or any other person is entitled.

(5) No provider shall willfully collect or attempt to collect an amount from an insured knowing that to be in violation of an agreement or contract with a health care payor to which the provider is a party.

(6) A person who violates this section is guilty of a class C felony punishable under chapter 9A.20 RCW.

(7) This section does not apply to statements made on an application for coverage under a contract or certificate of health care coverage issued by an insurer, health care service contractor, health maintenance organization, or other legal entity which is self-insured and providing health care benefits to its employees. [1990 c 119 § 11; 1986 c 243 § 3.]

Chapter 48.96

MOTOR VEHICLE SERVICE CONTRACTS

(Formerly: Motor vehicle mechanical breakdown insurance)

Sections

48.96.005	Purpose.
48.96.025	Reimbursement policy—Insurer's responsibility.
48.96.030	Reimbursement policy—Required provisions.
48.96.040	Service contract—Required statements.
48.96.045	Service contract—Notice to holder.
48.96.047	Service contract—Holder's right to return.
48.96.050	Service contracts—Excluded parties.
48.96.060	Noncompliance as unfair competition, trade practice—Remedies.
48.96.901	Effective date—1990 c 239 §§ 2–10.

48.96.005 Purpose. The purpose of this chapter is to protect the public and contract providers from losses arising from the mismanagement of funds paid for motor vehicle service contracts, to better inform the public of their rights and obligations under the contracts, to permit purchasers of such contracts the opportunity to return the contract for a refund, and to require the liabilities owed under these contracts to be fully insured, rather than partially insured, or insured only in the event of provider default. [1990 c 239 § 2.]

48.96.025 Reimbursement policy—Insurer's responsibility. (1) Every insurer issuing a reimbursement insurance policy shall include, as a part of the policy, the

motor vehicle service contract(s) that the reimbursement insurance policy is intended to cover. Notwithstanding RCW 48.18.100, subsequent changes to the motor vehicle service contract(s) must be filed by the insurer with the commissioner no later than thirty days after the date of the change.

(2) Every insurer issuing a reimbursement insurance policy must require that premiums due for coverage under the policy be paid directly by the provider to the insurer or its agent. [1990 c 239 § 3.]

48.96.030 Reimbursement policy—Required provisions. A motor vehicle service contract reimbursement insurance policy shall not be issued, sold, or offered for sale in this state unless the reimbursement insurance policy conspicuously states that the issuer of the policy shall pay on behalf of the provider all sums which the provider is legally obligated to pay according to the provider's contractual obligations under the motor vehicle service contracts issued or sold by the provider. [1990 c 239 § 6; 1987 c 99 § 3.]

48.96.040 Service contract—Required statements. A motor vehicle service contract shall not be issued, sold, or offered for sale in this state unless the contract conspicuously states that the obligations of the provider to the service contract holder are guaranteed under the reimbursement insurance policy, and unless the contract conspicuously states the name and address of the issuer of the reimbursement insurance policy, the applicable policy number, and the means by which a service contract holder may file a claim under the policy. [1990 c 239 § 7; 1987 c 99 § 4.]

48.96.045 Service contract—Notice to holder. A motor vehicle service contract shall not be issued, sold, or offered for sale in this state unless the contract contains a conspicuous statement that has been initialed by the service contract holder and discloses:

(1) Any material conditions that the service contract holder must meet to maintain coverage under the contract including, but not limited to any maintenance schedule to which the service contract holder must adhere, any requirement placed on the service contract holder for documenting repair or maintenance work, and any procedure to which the service contract holder must adhere for filing claims;

(2) The work and parts covered by the contract;

(3) Any time or mileage limitations;

(4) That the implied warranty of merchantability on the motor vehicle is not waived if the contract has been purchased within ninety days of the purchase date of the motor vehicle from a provider who also sold the motor vehicle covered by the contract;

(5) Any exclusions of coverage; and

(6) The contract holder's right to return the contract for a refund, which right can be no more restrictive than provided for in RCW 48.96.047. [1990 c 239 § 4.]

48.96.047 Service contract—Holder's right to return. (1) At a minimum, every provider shall permit the

service contract holder to return the contract within thirty days of its purchase if no claim has been made under the contract, and shall refund to the holder the full purchase price of the contract unless the service contract holder returns the contract ten or more days after its purchase, in which case the provider may charge a cancellation fee not exceeding twenty-five dollars. A ten percent penalty shall be added to any refund that is not paid within thirty days of return of the contract to the provider. If a contract holder returns the contract within thirty days of its purchase or within such longer time period as permitted under the contract, the contract shall be void from the beginning and the parties shall be in the same position as if no contract had been issued.

(2) If a service contract holder returns the contract in accordance with this section, the insurer issuing the reimbursement insurance policy covering the contract shall refund to the provider the full premium paid by the provider for coverage of the contract. [1990 c 239 § 5.]

48.96.050 Service contracts—Excluded parties. RCW 48.96.020, 48.96.030, and 48.96.040 do not apply to motor vehicle service contracts issued by a motor vehicle manufacturer or import distributor covering vehicles manufactured or imported by the motor vehicle manufacturer or import distributor. [1990 c 239 § 8; 1987 c 99 § 5.]

48.96.060 Noncompliance as unfair competition, trade practice—Remedies. Failure to comply with the provisions of this chapter is an unfair method of competition and an unfair or deceptive act or practice in the conduct of a trade or commerce, as specifically contemplated by RCW 19.86.020, and is a violation of the Consumer Protection Act, chapter 19.86 RCW. Any service contract holder injured as a result of a violation of a provision of this chapter shall be entitled to maintain an action pursuant to chapter 19.86 RCW against the motor vehicle service contract provider and the insurer issuing the applicable motor vehicle service contract reimbursement insurance policy and shall be entitled to all of the rights and remedies afforded by that chapter. Any successful claimant under this section shall also be entitled to reasonable attorneys' fees. [1990 c 239 § 9; 1987 c 99 § 6.]

48.96.901 Effective date—1990 c 239 §§ 2–10. Sections 2 through 10 of this act shall take effect January 1, 1991. [1990 c 239 § 11.]

Title 49

LABOR REGULATIONS

Chapters

- 49.04** Apprenticeship.
- 49.12** Industrial welfare.
- 49.17** Washington industrial safety and health act.

- 49.30** Agricultural labor.
- 49.46** Minimum wage act.

Chapter 49.04 APPRENTICESHIP

Sections

- 49.04.100** Woman and racial minority representation in apprenticeship programs—Required—Ratio.
- 49.04.110** Woman and racial minority representation in apprenticeship programs—Noncompliance.
- 49.04.120** Woman and racial minority representation—Community colleges, vocational, or high schools to enlist woman and racial minority representation in apprenticeship programs.
- 49.04.130** Woman and racial minority representation—Employer and employee organizations, apprenticeship council and committees, etc., to enlist woman and racial minority representation in apprenticeship programs.

49.04.100 Woman and racial minority representation in apprenticeship programs—Required—Ratio. Joint apprenticeship programs entered into under authority of chapter 49.04 RCW and which receive any state assistance in instructional or other costs, shall include entrance of women and racial minorities in such program, when available, in a ratio not less than the percentage of the minority race and female (minority and nonminority) labor force in the program sponsor's labor market area, based on current census figures issued by the office of financial management with the ultimate goal of obtaining the proportionate ratio of representation in the total program membership. Where minimum standards have been set for entering upon any such apprenticeship program, this woman and racial minority representation shall be filled when women and racial minority applicants have met such minimum standards and irrespective of individual ranking among all applicants seeking to enter the program: PROVIDED, That nothing in RCW 49.04.100 through 49.04.130 will affect the total number of entrants into the apprenticeship program or modify the dates of entrance both as established by the joint apprenticeship committee. Racial minority for the purposes of RCW 49.04.130 shall include African Americans, Asian Americans, Hispanic Americans, American Indians, Filipinos, and all other racial minority groups. [1990 c 72 § 1; 1985 c 6 § 17; 1969 ex.s. c 183 § 2.]

Purpose—Construction—1990 c 72; 1969 ex.s. c 183: "It is the policy of the legislature and the purpose of this act to provide every citizen in this state a reasonable opportunity to enjoy employment and other associated rights, benefits, privileges, and to help women and racial minorities realize in a greater measure the goals upon which this nation and this state were founded. All the provisions of this act shall be liberally construed to achieve these ends, and administered and enforced with a view to carry out the above declaration of policy." [1990 c 72 § 5; 1969 ex.s. c 183 § 1.]

Severability—1969 ex.s. c 183: "If any provision of this 1969 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 183 § 8.]

The foregoing annotations apply to 1969 ex.s. c 183. For codification of that act, see Codification Tables, Volume 0.

49.04.110 Woman and racial minority representation in apprenticeship programs—Noncompliance. When it shall appear to the department of labor and industries that any apprenticeship program referred to in RCW 49.04.100 has failed to comply with the woman or racial minority representation requirement hereinabove in such section referred to by January 1, 1970, which fact shall be determined by reports the department may request or in such other manner as it shall see fit, then the same shall be deemed prima facie evidence of noncompliance with RCW 49.04.100 through 49.04.130 and thereafter no state funds or facilities shall be expended upon such program: PROVIDED, That prior to such withdrawal of funds evidence shall be received and state funds or facilities shall not be denied if there is a showing of a genuine effort to comply with the provisions of RCW 49.04.100 through 49.04.130 as to entrance of women and racial minorities into the program. The director shall notify the appropriate federal authorities if there is noncompliance with the woman and racial minority representation qualification under any apprenticeship program as provided for in RCW 49.04.100 through 49.04.130. [1990 c 72 § 2; 1969 ex.s. c 183 § 3.]

49.04.120 Woman and racial minority representation—Community colleges, vocational, or high schools to enlist woman and racial minority representation in apprenticeship programs. Every community college, vocational school, or high school carrying on a program of vocational education shall make every effort to enlist woman and racial minority representation in the apprenticeship programs within the state and are authorized to carry out such purpose in such ways as they shall see fit. [1990 c 72 § 3; 1969 ex.s. c 183 § 4.]

49.04.130 Woman and racial minority representation—Employer and employee organizations, apprenticeship council and committees, etc., to enlist woman and racial minority representation in apprenticeship programs. Every employer and employee organization as well as the apprenticeship council and local and state apprenticeship committees and vocational schools shall make every effort to enlist woman and racial minority representation in the apprenticeship programs of the state and shall be aided therein by the department of labor and industries insofar as such department may be able to do so without undue interference with its other powers and duties. In addition, the legislature, in fulfillment of the public welfare, mandates those involved in apprenticeship training with the responsibility of making every effort to see that woman and racial minority representatives in such programs pursue the same to a successful conclusion. [1990 c 72 § 4; 1969 ex.s. c 183 § 5.]

Chapter 49.12 INDUSTRIAL WELFARE

Sections

49.12.123	Work permits for minors required.
49.12.170	Penalty. (Effective April 1, 1992.)
49.12.380	Child labor laws—Information program.

49.12.390	Child labor laws—Violations—Civil penalties—Restraining orders. (Effective April 1, 1992.)
49.12.400	Child labor laws—Appeals. (Effective April 1, 1992.)
49.12.410	Child labor laws—Violations—Criminal penalties. (Effective April 1, 1992.)
49.12.420	Child labor laws—Exclusive remedies. (Effective April 1, 1992.)
49.12.901	Severability—1991 c 303.
49.12.902	Effective date—1991 c 303 §§ 3 through 7.

49.12.123 Work permits for minors required. In implementing state policy to assure the attendance of children in the public schools it shall be required of any person, firm or corporation employing any minor under the age of eighteen years to obtain a work permit as set forth in RCW 49.12.121 and keep such permit on file during the employment of such minor, and upon termination of such employment of such minor to return such permit to the department of labor and industries. [1991 c 303 § 8; 1983 c 3 § 156; 1973 c 51 § 3.]

Severability—1973 c 51: See note following RCW 28A.225.010.

49.12.170 Penalty. (Effective April 1, 1992.) Except as otherwise provided in RCW 49.12.390 or 49.12.410, any employer employing any person for whom a minimum wage or standards, conditions, and hours of labor have been specified, at less than said minimum wage, or under standards, or conditions of labor or at hours of labor prohibited by the rules and regulations of the committee; or violating any other of the provisions of *this 1973 amendatory act, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars. [1991 c 303 § 6; 1973 2nd ex.s. c 16 § 16; 1913 c 174 § 17; RRS § 7636.]

**Reviser's note:* "this 1973 amendatory act," see note following RCW 49.12.005.

Witnesses protected—Penalty: RCW 49.12.130.

49.12.380 Child labor laws—Information program. Upon adoption of the rules under *section 1 of this act, the department of labor and industries shall implement a comprehensive program to inform employers of the rules adopted. The program shall include mailings, public service announcements, seminars, and any other means deemed appropriate to inform all Washington employers of their rights and responsibilities regarding the employment of minors. [1991 c 303 § 2.]

**Reviser's note:* Section 1 of this act, which amended RCW 49.12.121, was vetoed by the governor.

49.12.390 Child labor laws—Violations—Civil penalties—Restraining orders. (Effective April 1, 1992.) (1)(a) Except as otherwise provided in subsection (2) of this section, if the director, or the director's designee, finds that an employer has violated any of the requirements of RCW 49.12.121 or 49.12.123, or a rule or order adopted or variance granted under RCW 49.12.121 or 49.12.123, a citation stating the violations shall be issued to the employer. The citation shall be in writing, describing the nature of the violation including reference to the standards, rules, or orders alleged to have been violated. An initial citation for failure to comply

with RCW 49.12.123 or rules requiring a minor work permit and maintenance of records shall state a specific and reasonable time for abatement of the violation to allow the employer to correct the violation without penalty. The director or the director's designee may establish a specific time for abatement of other nonserious violations in lieu of a penalty for first time violations. The citation and a proposed penalty assessment shall be given to the highest management official available at the workplace or be mailed to the employer at the workplace. In addition, the department shall mail a copy of the citation and proposed penalty assessment to the central personnel office of the employer. Citations issued under this section shall be posted at or near the place where the violation occurred.

(b) Except when an employer corrects a violation as provided in (a) of this subsection, he or she shall be assessed a civil penalty of not more than one thousand dollars depending on the size of the business and the gravity of the violation. The employer shall pay the amount assessed within thirty days of receipt of the assessment or notify the director of his or her intent to appeal the citation or the assessment penalty as provided in RCW 49.12.400.

(2) If the director, or the director's designee, finds that an employer has committed a serious or repeated violation of the requirements of RCW 49.12.121 or 49.12.123, or any rule or order adopted or variance granted under RCW 49.12.121 or 49.12.123, the employer is subject to a civil penalty of not more than one thousand dollars for each day the violation continues. For the purposes of this subsection, a serious violation shall be deemed to exist if death or serious physical harm has resulted or is imminent from a condition that exists, or from one or more practices, means, methods, operations, or processes that have been adopted or are in use by the employer, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(3) In addition to any other authority provided in this section, if, upon inspection or investigation, the director, or director's designee, believes that an employer has violated RCW 49.12.121 or 49.12.123, or a rule or order adopted or variance granted under RCW 49.12.121 or 49.12.123, and that the violation creates a danger from which there is a substantial probability that death or serious physical harm could result to a minor employee, the director, or director's designee, may issue an order immediately restraining the condition, practice, method, process, or means creating the danger in the workplace. An order issued under this subsection may require the employer to take steps necessary to avoid, correct, or remove the danger and to prohibit the employment or presence of a minor in locations or under conditions where the danger exists.

(4) An employer who violates any of the posting requirements of RCW 49.12.121 or rules adopted implementing RCW 49.12.121 shall be assessed a civil penalty of not more than one hundred dollars for each violation.

(5) A person who gives advance notice, without the authority of the director, of an inspection to be conducted under this chapter shall be assessed a civil penalty of not more than one thousand dollars.

(6) Penalties assessed under this section shall be paid to the director and deposited into the general fund. [1991 c 303 § 3.]

49.12.400 Child labor laws—Appeals. (Effective April 1, 1992.) A person, firm, or corporation aggrieved by an action taken or decision made by the department under RCW 49.12.390 may appeal the action or decision to the director by filing notice of the appeal with the director within thirty days of the department's action or decision. A notice of appeal filed under this section shall stay the effectiveness of a citation or notice of the assessment of a penalty pending review of the appeal by the director, but such appeal shall not stay the effectiveness of an order of immediate restraint issued under RCW 49.12.390. Upon receipt of an appeal, a hearing shall be held in accordance with chapter 34.05 RCW. The director shall issue all final orders after the hearing. The final orders are subject to appeal in accordance with chapter 34.05 RCW. Orders not appealed within the time period specified in chapter 34.05 RCW are final and binding. [1991 c 303 § 4.]

49.12.410 Child labor laws—Violations—Criminal penalties. (Effective April 1, 1992.) An employer who knowingly or recklessly violates the requirements of RCW 49.12.121 or 49.12.123, or a rule or order adopted under RCW 49.12.121 or 49.12.123, is guilty of a gross misdemeanor. An employer whose practices in violation of the requirements of RCW 49.12.121 or 49.12.123, or a rule or order adopted under RCW 49.12.121 or 49.12.123, result in the death or permanent disability of a minor employee is guilty of a class C felony. [1991 c 303 § 5.]

49.12.420 Child labor laws—Exclusive remedies. (Effective April 1, 1992.) The penalties established in RCW 49.12.390 and 49.12.410 for violations of RCW 49.12.121 and 49.12.123 are exclusive remedies. [1991 c 303 § 7.]

49.12.901 Severability—1991 c 303. 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. [1991 c 303 § 10.]

49.12.902 Effective date—1991 c 303 §§ 3 through 7. Sections 3 through 7 of this act shall take effect April 1, 1992. [1991 c 303 § 12.]

Chapter 49.17

WASHINGTON INDUSTRIAL SAFETY AND HEALTH ACT

Sections

49.17.180

Violations—Civil penalties.

- 49.17.210 Research, experiments, and demonstrations for safety purposes—Confidentiality of information—Variances.
- 49.17.250 Voluntary compliance program—Consultation and advisory services.

49.17.180 Violations—Civil penalties. (1) Any employer who willfully or repeatedly violates the requirements of RCW 49.17.060, of any safety or health standard promulgated under the authority of this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090 may be assessed a civil penalty not to exceed seventy thousand dollars for each violation. A minimum penalty of five thousand dollars shall be assessed for a willful violation.

(2) Any employer who has received a citation for a serious violation of the requirements of RCW 49.17.060, of any safety or health standard promulgated under the authority of this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090 as determined in accordance with subsection (6) of this section, shall be assessed a civil penalty not to exceed seven thousand dollars for each such violation.

(3) Any employer who has received a citation for a violation of the requirements of RCW 49.17.060, of any safety or health standard promulgated under this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090, where such violation is specifically determined not to be of a serious nature as provided in subsection (6) of this section, may be assessed a civil penalty not to exceed seven thousand dollars for each such violation, unless such violation is determined to be de minimis.

(4) Any employer who fails to correct a violation for which a citation has been issued under RCW 49.17.120 or 49.17.130 within the period permitted for its correction, which period shall not begin to run until the date of the final order of the board of industrial insurance appeals in the case of any review proceedings under this chapter initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty of not more than seven thousand dollars for each day during which such failure or violation continues.

(5) Any employer who violates any of the posting requirements of this chapter, or any of the posting requirements of rules promulgated by the department pursuant to this chapter related to employee or employee representative's rights to notice, including but not limited to those employee rights to notice set forth in RCW 49.17.080, 49.17.090, 49.17.120, 49.17.130, 49.17.220(1) and 49.17.240(2), shall be assessed a penalty not to exceed seven thousand dollars for each such violation. Any employer who violates any of the posting requirements for the posting of informational, educational, or training materials under the authority of RCW

49.17.050(7), may be assessed a penalty not to exceed seven thousand dollars for each such violation.

(6) For the purposes of this section, a serious violation shall be deemed to exist in a work place if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in such work place, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(7) The director, or his authorized representatives, shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the number of affected employees of the employer being charged, the gravity of the violation, the size of the employer's business, the good faith of the employer, and the history of previous violations.

(8) Civil penalties imposed under this chapter shall be paid to the director for deposit in the supplemental pension fund established by RCW 51.44.033. Civil penalties may be recovered in a civil action in the name of the department brought in the superior court of the county where the violation is alleged to have occurred, or the department may utilize the procedures for collection of civil penalties as set forth in RCW 51.48.120 through 51.48.150. [1991 c 108 § 1; 1986 c 20 § 2; 1973 c 80 § 18.]

49.17.210 Research, experiments, and demonstrations for safety purposes—Confidentiality of information—Variances. The director is authorized to conduct, either directly or by grant or contract, research, experiments, and demonstrations as may be of aid and assistance in the furtherance of the objects and purposes of this chapter. Employer identity, employee identity, and personal identifiers of voluntary participants in research, experiments, and demonstrations shall be deemed confidential and shall not be open to public inspection. Information obtained from such voluntary activities shall not be deemed to be medical information for the purpose of RCW 51.36.060 and shall be deemed confidential and shall not be open to public inspection. The director, in his or her discretion, is authorized to grant a variance from any rule or regulation or portion thereof, whenever he or she determines that such variance is necessary to permit an employer to participate in an experiment approved by the director, and the experiment is designed to demonstrate or validate new and improved techniques to safeguard the health or safety of employees. Any such variance shall require that all due regard be given to the health and safety of all employees participating in any experiment. [1991 c 89 § 1; 1973 c 80 § 21.]

49.17.250 Voluntary compliance program—Consultation and advisory services. (1) In carrying out the responsibilities for the development of a voluntary compliance program under the authority of RCW

49.17.050(8) and the rendering of advisory and consultative services to employers, the director may grant an employer's application for advice and consultation, and for the purpose of affording such consultation and advice visit the employer's work place. Such consultation and advice shall be limited to the matters specified in the request affecting the interpretation and applicability of safety and health standards to the conditions, structures, machines, equipment, apparatus, devices, materials, methods, means, and practices in the employer's work place. The director in granting any requests for consultative or advisory service may provide for an alternative means of affording consultation and advice other than on-site consultation.

(2) The director, or an authorized representative, will make recommendations regarding the elimination of any hazards disclosed within the scope of the on-site consultation. No visit to an employer's work place shall be regarded as an inspection or investigation under the authority of this chapter, and no notices or citations shall be issued, nor, shall any civil penalties be assessed upon such visit, nor shall any authorized representative of the director designated to render advice and consult with employers under the voluntary compliance program have any enforcement authority: PROVIDED, That in the event an on-site visit discloses a serious violation of a health and safety standard as defined in RCW 49.17.180(6), and the hazard of such violation is either not abated by the cooperative action of the employer, or, is not subject to being satisfactorily abated by the cooperative action of the employer, the director shall either invoke the administrative restraining authority provided in RCW 49.17.130 or seek the issuance of injunctive process under the authority of RCW 49.17.170 or invoke both such remedies.

(3) Nothing in this section shall be construed as providing immunity to any employer who has made application for consultative services during the pendency of the granting of such application from inspections or investigations conducted under RCW 49.17.070 or any inspection conducted as a result of a complaint, nor immunity from inspections under RCW 49.17.070 or inspections resulting from a complaint subsequent to the conclusion of the consultative period. This section shall not be construed as requiring an inspection under RCW 49.17.070 of any work place which has been visited for consultative purposes. However, in the event of a subsequent inspection, the director, or an authorized representative, may in his or her discretion take into consideration any information obtained during the consultation visit of that work place in determining the nature of an alleged violation and the amount of penalties to be assessed, if any. Such rules and regulations to be promulgated pursuant to this section shall provide that in all instances of serious violations as defined in RCW 49.17.180(6) which are disclosed in any consultative period, shall be corrected within a specified period of time at the expiration of which an inspection will be conducted under the authority of RCW 49.17.070. All employers requesting consultative services shall be advised

of the provisions of this section and the rules adopted by the director relating to the voluntary compliance program. Information obtained by the department as a result of employer-requested consultation and training services shall be deemed confidential and shall not be open to public inspection. Within thirty days of receipt, the employer shall make voluntary services reports available to employees or their collective bargaining representatives for review. Employers may satisfy the availability requirement by requesting a copy of the reports from the department. The director may provide by rule for the frequency, manner, and method of the rendering of consultative services to employers, and for the scheduling and priorities in granting applications consistent with the availability of personnel, and in such a manner as not to jeopardize the enforcement requirements of this chapter. [1991 c 89 § 2; 1973 c 80 § 25.]

Chapter 49.30 AGRICULTURAL LABOR

Sections
49.30.005 Intent—Report.

49.30.005 Intent—Report. (1) It is the intent of the legislature that the department assist agricultural employers in mitigating the costs of the state's unemployment insurance program. The department shall work with members of the agricultural community to: Improve understanding of the program's operation; increase compliance with work-search requirements; provide prompt notification of potential claims against an employer's experience rating; inform employers of their rights; inform employers of the actions necessary to appeal a claim and to protect their rights; and reduce claimant and employer fraud. These efforts shall include:

- (a) Conducting employer workshops and community seminars;
- (b) Developing new educational materials; and
- (c) Developing forms that use lay language.

(2) The department shall report to the appropriate standing committees of the legislature by January 10, 1990, 1991, and 1992 and include a description of the activities of the department to carry out the intents of this section and provide quantitative data where possible on the effectiveness of the activities undertaken by the department to comply with the intents of this section during the previous calendar year. [1991 c 31 § 1; 1990 c 245 § 10; 1989 c 380 § 82.]

Conflict with federal requirements—1990 c 245: See note following RCW 50.04.030.

Chapter 49.46 MINIMUM WAGE ACT

Sections
49.46.025 Repealed.

49.46.025 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Title 50

UNEMPLOYMENT COMPENSATION

Chapters

- 50.04** Definitions.
- 50.12** Administration.
- 50.16** Funds.
- 50.20** Benefits and claims.
- 50.22** Extended benefits.
- 50.24** Contributions by employers.
- 50.29** Employer experience rating.
- 50.44** Special coverage provisions.
- 50.67** Washington state job training coordinating council.
- 50.70** Programs for dislocated forest products workers.

Chapter 50.04 DEFINITIONS

Sections

- 50.04.030 Benefit year.
- 50.04.140 Employment—Exception tests. (Effective January 1, 1992.)
- 50.04.165 Employment—Corporate officers—Election of coverage.
- 50.04.205 Services performed by aliens.
- 50.04.206 Employment—Nonresident aliens.
- 50.04.225 Employment—Barber and cosmetology services.
- 50.04.230 Employment—Services of insurance agents, brokers, and solicitors, real estate brokers and real estate salesmen, and investment company agents and solicitors. (Effective January 1, 1992.)

50.04.030 Benefit year. "Benefit year" with respect to each individual, means the fifty-two consecutive week period beginning with the first day of the calendar week in which the individual files an application for an initial determination and thereafter the fifty-two consecutive week period beginning with the first day of the calendar week in which the individual next files an application for an initial determination after the expiration of the individual's last preceding benefit year: PROVIDED, HOWEVER, That the foregoing limitation shall not be deemed to preclude the establishment of a new benefit year under the laws of another state pursuant to any agreement providing for the interstate combining of employment and wages and the interstate payment of benefits nor shall this limitation be deemed to preclude the commissioner from backdating an initial application at the request of the claimant either for the convenience of the department of employment security or for any other reason deemed by the commissioner to be good cause.

An individual's benefit year shall be extended to be fifty-three weeks when at the expiration of fifty-two weeks the establishment of a new benefit year would result in the use of a quarter of wages in the new base year

that had been included in the individual's prior base year.

No benefit year will be established unless it is determined that the individual earned wages in "employment" in not less than six hundred eighty hours of the individual's base year: PROVIDED, HOWEVER, That a benefit year cannot be established if the base year wages include wages earned prior to the establishment of a prior benefit year unless the individual worked and earned wages since the last separation from employment immediately before the application for initial determination in the previous benefit year if the applicant was an unemployed individual at the time of application, or since the initial separation in the previous benefit year if the applicant was not an unemployed individual at the time of filing an application for initial determination for the previous benefit year, of not less than six times the weekly benefit amount computed for the individual's new benefit year.

If an individual's prior benefit year was based on the last four completed calendar quarters, a new benefit year shall not be established until the new base year does not include any hours used in the establishment of the prior benefit year.

If the wages of an individual are not based upon a fixed duration of time or if the individual's wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, the wages for any week shall be determined in such manner as the commissioner may by regulation prescribe. Such regulation shall, so far as possible, secure results reasonably similar to those which would prevail if the individual were paid his or her wages at regular intervals. [1991 c 117 § 1; 1990 c 245 § 1. Prior: 1987 c 278 § 2; 1987 c 256 § 1; 1977 ex.s. c 33 § 1; 1973 c 73 § 1; 1970 ex.s. c 2 § 2; 1949 c 214 § 1; 1945 c 35 § 4; Rem. Supp. 1949 § 9998-143; prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

Conflict with federal requirements—1991 c 117: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1991 c 117 § 5.]

Severability—1991 c 117: "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." [1991 c 117 § 6.]

Effective dates—1991 c 117: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and sections 1 and 4 [of this act] shall take effect July 1, 1991, and section 3 [of this act] shall take effect July 7, 1991, for new claims filed on or after July 7, 1991." [1991 c 117 § 7.]

Conflict with federal requirements—1990 c 245: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The

rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1990 c 245 § 11.]

Effective dates—1990 c 245: "(1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 28, 1990].

(2) Sections 2, 3, and 6 through 9 of this act shall take effect on July 1, 1990." [1990 c 245 § 12.]

Effective dates—Construction—1977 ex.s. c 33: "The provisions of this 1977 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 ninety days after adjournment sine die of the 1977 Extraordinary Session (forty-fifth legislature) of the Washington State Legislature: *Provided*, That the first paragraph of section 1 of this 1977 amendatory act shall take effect immediately and the remaining portion of section 1 of this 1977 amendatory act and all of section 2 of this 1977 amendatory act shall take effect commencing with benefit years beginning on and after October 1, 1978; section 7 of this 1977 amendatory act shall take effect commencing with benefit years beginning on and after July 3, 1977." [1977 ex.s. c 33 § 11.] For codification of 1977 ex.s. c 33, see Codification Tables, Volume O.

Effective dates—1973 c 73: "Sections 7, 8, 10, 11, and 12 of this 1973 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. Sections 1, 2, 3, 4, 5, 6, and 9 of this 1973 amendatory act shall take effect on July 1, 1973." [1973 c 73 § 13.] The effective date of sections 7, 8, 10, 11, and 12 was March 8, 1973. The effective date of sections 1, 2, 3, 4, 6 and 9 was July 1, 1973. Section 5 referred to above was vetoed.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.04.140 Employment—Exception tests. (Effective January 1, 1992.) Services performed by an individual for remuneration shall be deemed to be employment subject to this title unless and until it is shown to the satisfaction of the commissioner that:

(1)(a) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact; and

(b) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed; and

(c) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service.

(2) Or as a separate alternative, it shall not constitute employment subject to this title if it is shown that:

(a) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact; and

(b) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed; and

(c) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or such individual has a principal place of business for the work the individual is conducting that is eligible for a business deduction for federal income tax purposes; and

(d) On the effective date of the contract of service, such individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting; and

(e) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, such individual has established an account with the department of revenue, and other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington; and

(f) On the effective date of the contract of service, such individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting. [1991 c 246 § 6; 1945 c 35 § 15; Rem. Supp. 1945 § 9998–154. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Effective date—Conflict with federal requirements—1991 c 246: See notes following RCW 51.08.195.

50.04.165 Employment—Corporate officers—Election of coverage. (1) Services performed by corporate officers as defined in subsection (2) of this section, covered by chapter 50.44 RCW, shall not be considered services in employment. However, a corporation may elect to cover not less than all of its corporate officers under RCW 50.24.160. If an employer does not elect to cover its corporate officers under RCW 50.24.160, the employer must notify its corporate officers in writing that they are ineligible for unemployment benefits. If the employer fails to notify any corporate officer, then that person shall not be considered to be a corporate officer for the purposes of this section.

(2) The officers of a corporation shall consist of a president, one or more vice presidents as may be prescribed by the bylaws, a secretary, and a treasurer. [1991 c 72 § 57; 1986 c 110 § 1; 1983 1st ex.s. c 23 § 4; 1981 c 35 § 13.]

Conflict with federal requirements—1986 c 110: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1986 c 110 § 2.]

Severability—1986 c 110: "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." [1986 c 110 § 3.]

Effective date—1986 c 110: "This act shall take effect July 1, 1986." [1986 c 110 § 4.]

Conflict with federal requirements—**Effective dates**—**Construction**—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Severability—1981 c 35: See note following RCW 50.22.030.

50.04.205 Services performed by aliens. Except as provided in RCW 50.04.206, services performed by aliens legally or illegally admitted to the United States shall be considered services in employment subject to the payment of contributions to the extent that services by citizens are covered. [1990 c 245 § 2; 1977 ex.s. c 292 § 5.]

Conflict with federal requirements—**Effective dates**—1990 c 245: See notes following RCW 50.04.030.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.04.206 Employment—**Nonresident aliens.** The term "employment" shall not include service that is performed by a nonresident alien for the period he or she is temporarily present in the United States as a nonimmigrant under subparagraph (F), (H)(iii), or (J) of section 101(a)(15) of the federal immigration and naturalization act, as amended, and that is performed to carry out the purpose specified in the applicable subparagraph of the federal immigration and naturalization act. [1990 c 245 § 3.]

Conflict with federal requirements—**Effective dates**—1990 c 245: See notes following RCW 50.04.030.

50.04.225 Employment—**Barber and cosmetology services.** The term "employment" does not include services performed in a barber shop or cosmetology shop by persons licensed under chapter 18.16 RCW if the person is a booth renter as defined in RCW 18.16.020. [1991 c 324 § 17; 1985 c 7 § 117; 1982 1st ex.s. c 18 § 20.]

Severability—1991 c 324: See RCW 18.16.910.

Severability—**Conflict with federal requirements**—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.04.230 Employment—**Services of insurance agents, brokers, and solicitors, real estate brokers and real estate salesmen, and investment company agents and solicitors.** (Effective January 1, 1992.) The term "employment" shall not include service performed by an insurance agent, insurance broker, or insurance solicitor or a real estate broker or a real estate salesman to the extent he or she is compensated by commission and service performed by an investment company agent or solicitor to the extent he or she is compensated by commission. The term "investment company", as used in this section is to be construed as meaning an investment company as defined in the act of congress entitled "Investment Company Act of 1940." [1991 c 246 § 7; 1947 c 5 § 24; 1945 c 35 § 24; Rem. Supp. 1947 § 9998-162a.]

Effective date—**Conflict with federal requirements**—1991 c 246: See notes following RCW 51.08.195.

Chapter 50.12 ADMINISTRATION

Sections

- | | |
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| 50.12.245 | Cooperation with work force training and education coordinating board. |
| 50.12.270 | Timber impact areas—Training and services program—Survey—Definition. |

50.12.245 Cooperation with work force training and education coordinating board. The commissioner shall cooperate with the work force training and education coordinating board in the conduct of the board's responsibilities under RCW 28C.18.060 and shall provide information and data in a format that is accessible to the board. [1991 c 238 § 80.]

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

50.12.270 Timber impact areas—**Training and services program**—**Survey**—**Definition.** (1) Subject to the availability of state or federal funds, the employment security department, as a member of the agency timber task force and in consultation with the economic recovery coordination board, shall consult with and may subcontract with local educational institutions, local businesses, local labor organizations, local associate development organizations, local private industry councils, local social service organizations, and local governments in carrying out a program of training and services, including training through the self-employment and enterprise development (SEED) program, for dislocated workers in timber impact areas.

(2) The department shall conduct a survey to determine the actual future employment needs and jobs skills in timber impact areas.

(3) The department shall coordinate the services provided in this section with all other services provided by the department and with the other economic recovery efforts undertaken by state and local government agencies on behalf of the timber impact areas.

(4) The department shall make every effort to procure additional federal and other moneys for the efforts enumerated in this section.

(5) For the purposes of this section, "timber impact area" means a county having a population of less than five hundred thousand, or a city or town located within a county having a population of less than five hundred thousand, and meeting two of the following three criteria, as determined by the employment security department, for the most recent year such data is available: (a) A lumber and wood products employment location quotient at or above the state average; (b) projected or actual direct lumber and wood products job losses of one hundred positions or more, except counties having a population greater than two hundred thousand but less than five hundred thousand must have direct lumber and wood products job losses of one thousand positions or more; or (c) an annual unemployment rate twenty percent or more above the state average. [1991 c 315 § 3.]

Intent—1991 c 315: "The legislature finds that:

(1) The economic health and well-being of timber-dependent communities is of substantial public concern. The significant reduction in annual timber harvest levels likely will result in reduced economic activity and persistent unemployment and underemployment over time, which would be a serious threat to the safety, health, and welfare of residents of the timber impact areas, decreasing the value of private investments and jeopardizing the sources of public revenue.

(2) Timber impact areas are most often located in areas that are experiencing little or no economic growth, creating an even greater risk to the health, safety, and welfare of these communities. The ability to remedy problems caused by the substantial reduction in harvest activity is beyond the power and control of the regulatory process and influence of the state, and the ordinary operations of private enterprise without additional governmental assistance are insufficient to adequately remedy the resulting problems of poverty and unemployment.

(3) To address these concerns, it is the intent of the legislature to increase training and retraining services accessible to timber impact areas, and provide for coordination of noneconomic development services in timber impact areas as economic development efforts will not succeed unless social, housing, health, and other needs are addressed." [1991 c 315 § 1.]

Severability—Conflict with federal requirements—Effective date—1991 c 315: See RCW 50.70.900 through 50.70.902.

Chapter 50.16 FUNDS

Sections

50.16.010 Unemployment compensation fund—Administrative contingency fund—Federal interest payment fund.

50.16.010 Unemployment compensation fund—Administrative contingency fund—Federal interest payment fund. There shall be maintained as special funds, separate and apart from all public moneys or funds of this state an unemployment compensation fund, an administrative contingency fund, and a federal interest payment fund, which shall be administered by the commissioner exclusively for the purposes of this title, and to which RCW 43.01.050 shall not be applicable. The unemployment compensation fund shall consist of

(1) all contributions and payments in lieu of contributions collected pursuant to the provisions of this title,

(2) any property or securities acquired through the use of moneys belonging to the fund,

(3) all earnings of such property or securities,

(4) any moneys received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the social security act, as amended,

(5) all money recovered on official bonds for losses sustained by the fund,

(6) all money credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended,

(7) all money received from the federal government as reimbursement pursuant to section 204 of the federal-state extended compensation act of 1970 (84 Stat. 708-712; 26 U.S.C. Sec. 3304), and

(8) all moneys received for the fund from any other source.

All moneys in the unemployment compensation fund shall be commingled and undivided.

The administrative contingency fund shall consist of all interest on delinquent contributions collected pursuant to this title, all fines and penalties collected pursuant to the provisions of this title, all sums recovered on official bonds for losses sustained by the fund, and revenue received under RCW 50.24.014: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district 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. Moneys available in the administrative contingency fund, other than money in the special account created under RCW 50.24.014, shall be expended upon the direction of the commissioner, with the approval of the governor, whenever it appears to him or her that such expenditure is necessary for:

(a) The proper administration of this title and no federal funds are available for the specific purpose to which such expenditure is to be made, provided, the moneys are not substituted for appropriations from federal funds which, in the absence of such moneys, would be made available.

(b) The proper administration of this title for which purpose appropriations from federal funds have been requested but not yet received, provided, the administrative contingency fund will be reimbursed upon receipt of the requested federal appropriation.

Money in the special account created under RCW 50.24.014 may only be expended, after appropriation, for the purposes specified in *RCW 74.09.035, 74.09.510, 74.09.520, and 74.09.700. [1991 1st sp.s. c 13 § 59; 1987 c 202 § 218; 1985 ex.s. c 5 § 6; 1983 1st ex.s. c 13 § 5; 1980 c 142 § 1; 1977 ex.s. c 292 § 24; 1973 c 73 § 4; 1969 ex.s. c 199 § 27; 1959 c 170 § 1; 1955 c 286 § 2; 1953 ex.s. c 8 § 5; 1945 c 35 § 60; Rem. Supp. 1945 § 9998-198. Prior: 1943 c 127 § 6; 1941 c 253 §§ 7, 10; 1939 c 214 § 11; 1937 c 162 § 13.]

***Reviser's note:** The reference to "RCW 74.09.035, 74.09.510, 74.09.520, and 74.09.700" is in error. An amendment to this section in a previous enactment (1985 ex.s. c 5 § 6) referred to "this 1985 act." The error occurred when this phrase was translated to chapter 5 of the 1985 regular session instead of chapter 5 of the extraordinary session. The correct translation of "this 1985 act" is "RCW 50.62.010, 50.62.020, 50.62.030, 50.04.070, 50.04.072, 50.16.010, 50.29.025, 50.24.014, 50.44.053, 50.22.010, and 50.22.112."

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Intent—1987 c 202: See note following RCW 2.04.190.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Conflict with federal requirements—1983 1st ex.s. c 13: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state." [1983 1st ex.s. c 13 § 13.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Effective dates—1973 c 73: See note following RCW 50.04.030.

Chapter 50.20
BENEFITS AND CLAIMS

Sections

50.20.085	Disqualification for receipt of industrial insurance disability benefits.
50.20.160	Redetermination.
50.20.190	Recovery of benefit payments.

50.20.085 Disqualification for receipt of industrial insurance disability benefits. An individual is disqualified from benefits with respect to any day or days for which he or she is receiving, has received, or will receive compensation under RCW 51.32.060 or 51.32.090. [1991 c 117 § 2; 1986 c 75 § 1.]

Conflict with federal requirements—Severability—Effective dates—1991 c 117: See notes following RCW 50.04.030.

50.20.160 Redetermination. (1) A determination of amount of benefits potentially payable issued pursuant to the provisions of RCW 50.20.120 and 50.20.140 shall not serve as a basis for appeal but shall be subject to request by the claimant for reconsideration and/or for redetermination by the commissioner at any time within one year from the date of delivery or mailing of such determination, or any redetermination thereof: **PROVIDED**, That in the absence of fraud or misrepresentation on the part of the claimant, any benefits paid prior to the date of any redetermination which reduces the amount of benefits payable shall not be subject to recovery under the provisions of RCW 50.20.190. A denial of a request to reconsider or a redetermination shall be furnished the claimant in writing and provide the basis for appeal under the provisions of RCW 50.32.020.

(2) A determination of denial of benefits issued under the provisions of RCW 50.20.180 shall become final, in absence of timely appeal therefrom: **PROVIDED**, That the commissioner may reconsider and redetermine such determinations at any time within one year from delivery or mailing to correct an error in identity, omission of fact, or misapplication of law with respect to the facts.

(3) A determination of allowance of benefits shall become final, in absence of a timely appeal therefrom: **PROVIDED**, That the commissioner may redetermine such allowance at any time within two years following the benefit year in which such allowance was made in order to recover any benefits improperly paid and for which recovery is provided under the provisions of RCW 50.20.190: **AND PROVIDED FURTHER**, That in the absence of fraud, misrepresentation, or nondisclosure, this provision or the provisions of RCW 50.20.190 shall not be construed so as to permit redetermination or recovery of an allowance of benefits which having been made after consideration of the provisions of RCW 50.20.010(3), or the provisions of RCW 50.20.050, 50.20.060, 50.20.080, or 50.20.090 has become final.

(4) A redetermination may be made at any time: (a) To conform to a final court decision applicable to either an initial determination or a determination of denial or allowance of benefits; (b) in the event of a back pay award or settlement affecting the allowance of benefits; or (c) in the case of fraud, misrepresentation, or willful

nondisclosure. Written notice of any such redetermination shall be promptly given by mail or delivered to such interested parties as were notified of the initial determination or determination of denial or allowance of benefits and any new interested party or parties who, pursuant to such regulation as the commissioner may prescribe, would be an interested party. [1990 c 245 § 4; 1959 c 266 § 4; 1953 ex.s. c 8 § 13; 1951 c 215 § 6; 1945 c 35 § 84; Rem. Supp. 1945 § 9998–222. Prior: 1941 c 253 § 4.]

Conflict with federal requirements—1990 c 245: See note following RCW 50.04.030.

50.20.190 Recovery of benefit payments. (1) An individual who is paid any amount as benefits under this title to which he or she is not entitled shall, unless otherwise relieved pursuant to this section, be liable for repayment of the amount overpaid. The department shall issue an overpayment assessment setting forth the reasons for and the amount of the overpayment. The amount assessed, to the extent not collected, may be deducted from any future benefits payable to the individual: **PROVIDED**, That in the absence of fraud, misrepresentation, or willful nondisclosure, every determination of liability shall be mailed or personally served not later than two years after the close of the individual's benefit year in which the purported overpayment was made unless the merits of the claim are subjected to administrative or judicial review in which event the period for serving the determination of liability shall be extended to allow service of the determination of liability during the six-month period following the final decision affecting the claim.

(2) The commissioner may waive an overpayment if the commissioner finds that said overpayment was not the result of fraud, misrepresentation, willful nondisclosure, or fault attributable to the individual and that the recovery thereof would be against equity and good conscience: **PROVIDED, HOWEVER**, That the overpayment so waived shall be charged against the individual's applicable entitlement for the eligibility period containing the weeks to which the overpayment was attributed as though such benefits had been properly paid.

(3) Any assessment herein provided shall constitute a determination of liability from which an appeal may be had in the same manner and to the same extent as provided for appeals relating to determinations in respect to claims for benefits: **PROVIDED**, That an appeal from any determination covering overpayment only shall be deemed to be an appeal from the determination which was the basis for establishing the overpayment unless the merits involved in the issue set forth in such determination have already been heard and passed upon by the appeal tribunal. If no such appeal is taken to the appeal tribunal by the individual within thirty days of the delivery of the notice of determination of liability, or within thirty days of the mailing of the notice of determination, whichever is the earlier, said determination of liability shall be deemed conclusive and final. Whenever any such notice of determination of liability becomes conclusive and final, the commissioner, upon giving at

least twenty days notice by certified mail return receipt requested to the individual's last known address of the intended action, may file with the superior court clerk of any county within the state a warrant in the amount of the notice of determination of liability plus a filing fee of five dollars. The clerk of the county where the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the person(s) mentioned in the warrant, the amount of the notice of determination of liability, and the date when the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to, and any interest in, all real and personal property of the person(s) against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. A warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law for a civil judgment. A copy of the warrant shall be mailed to the person(s) mentioned in the warrant by certified mail to the person's last known address within five days of its filing with the clerk.

(4) On request of any agency which administers an employment security law of another state, the United States, or a foreign government and which has found in accordance with the provisions of such law that a claimant is liable to repay benefits received under such law, the commissioner may collect the amount of such benefits from the claimant to be refunded to the agency. In any case in which under this section a claimant is liable to repay any amount to the agency of another state, the United States, or a foreign government, such amounts may be collected without interest by civil action in the name of the commissioner acting as agent for such agency if the other state, the United States, or the foreign government extends such collection rights to the employment security department of the state of Washington, and provided that the court costs be paid by the governmental agency benefiting from such collection.

(5) Any employer who is a party to a back pay award or settlement due to loss of wages shall, within thirty days of the award or settlement, report to the department the amount of the award or settlement, the name and social security number of the recipient of the award or settlement, and the period for which it is awarded. When an individual has been awarded or receives back pay, for benefit purposes the amount of the back pay shall constitute wages paid in the period for which it was awarded. For contribution purposes, the back pay award or settlement shall constitute wages paid in the period in which it was actually paid. The following requirements shall also apply:

(a) The employer shall reduce the amount of the back pay award or settlement by an amount determined by the department based upon the amount of unemployment benefits received by the recipient of the award or settlement during the period for which the back pay award or settlement was awarded;

(b) The employer shall pay to the unemployment compensation fund, in a manner specified by the commissioner, an amount equal to the amount of such reduction;

(c) The employer shall also pay to the department any taxes due for unemployment insurance purposes on the entire amount of the back pay award or settlement notwithstanding any reduction made pursuant to (a) of this subsection;

(d) If the employer fails to reduce the amount of the back pay award or settlement as required in (a) of this subsection, the department shall issue an overpayment assessment against the recipient of the award or settlement in the amount that the back pay award or settlement should have been reduced; and

(e) If the employer fails to pay to the department an amount equal to the reduction as required in (b) of this subsection, the department shall issue an assessment of liability against the employer which shall be collected pursuant to the procedures for collection of assessments provided herein and in RCW 50.24.110.

(6) When an individual fails to repay an overpayment assessment that is due and fails to arrange for satisfactory repayment terms, the commissioner shall impose an interest penalty of one percent of the outstanding balance for each month that payments are not made in a timely fashion. Interest shall accrue immediately on overpayments assessed pursuant to RCW 50.20.070. For any other overpayment, interest shall accrue when the individual has missed two or more of their monthly payments either partially or in full. The interest penalty shall be used to fund detection and recovery of overpayment and collection activities. [1991 c 117 § 3; 1990 c 245 § 5; 1989 c 92 § 2; 1981 c 35 § 6; 1975 1st ex.s. c 228 § 3; 1973 1st ex.s. c 158 § 7; 1953 ex.s. c 8 § 14; 1951 c 215 § 8; 1947 c 215 § 18; 1945 c 35 § 87; Rem. Supp. 1947 § 9998-225. Prior: 1943 c 127 § 12; 1941 c 253 § 13; 1939 c 214 § 14; 1937 c 162 § 16.]

Conflict with federal requirements—Severability—Effective dates—1991 c 117: See notes following RCW 50.04.030.

Conflict with federal requirements—1990 c 245: See note following RCW 50.04.030.

Severability—1981 c 35: See note following RCW 50.22.030.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Government or retirement pension plan payments as remuneration or wages—Recovery of excess over benefits allowable, limitations: RCW 50.04.323.

Chapter 50.22

EXTENDED BENEFITS

Sections

50.22.090

Additional benefit period for qualifying counties and forest products industry—Eligibility—Training program defined—Rules.

50.22.090 Additional benefit period for qualifying counties and forest products industry—Eligibility—Training program defined—Rules. (1) An additional

benefit period is established for counties identified under subsection (2) of this section beginning on the first Sunday after July 1, 1991, and for the forest products industry beginning with the third week after the first Sunday after July 1, 1991. Benefits shall be paid as provided in subsection (3) of this section to exhaustees eligible under subsection (4) of this section.

(2) The additional benefit period applies to counties having a population of less than five hundred thousand beginning with the third week after a week in which the commissioner determines that a county meets two of the following three criteria, as determined by the department, for the most recent year in which such data is available: (a) A lumber and wood products employment location quotient at or above the state average; (b) projected or actual direct lumber and wood products job losses of one hundred positions or more, except counties having a population greater than two hundred thousand but less than five hundred thousand must have direct lumber and wood products job losses of one thousand positions or more; or (c) an annual unemployment rate twenty percent or more above the state average. The additional benefit period for a county may end no sooner than fifty-two weeks after the additional benefit period begins.

(3) Additional benefits shall be paid as follows:

(a) No new claims for additional benefits shall be accepted for weeks beginning after July 3, 1993, but for claims established on or before July 3, 1993, weeks of unemployment occurring after July 3, 1993, shall be compensated as provided in this section.

(b) The total additional benefit amount shall be fifty-two times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year. Additional benefits shall not be payable for weeks more than one year beyond the end of the benefit year of the regular claim, and shall be payable for up to five weeks following the completion of the training required by this section.

(c) The weekly benefit amount shall be calculated as specified in RCW 50.22.040.

(d) Benefits paid under this section shall be paid under the same terms and conditions as regular benefits and shall not be charged to the experience rating account of individual employers. The additional benefit period shall be suspended with the start of an extended benefit period, or any totally federally funded benefit program, with eligibility criteria and benefits comparable to the program established by this section, and shall resume the first week following the end of the federal program.

(4) An additional benefit eligibility period is established for any exhaustee who:

(a)(i) At the time of last separation from employment, resided in or was employed in a county identified under subsection (2) of this section; or

(ii) During his or her base year, earned wages in at least six hundred eighty hours in the forest products industry, which shall be determined by the department but shall include the industries assigned the major group

standard industrial classification codes "24" and "26" and the industries involved in the harvesting and management of logs, transportation of logs and wood products, processing of wood products, and the manufacturing and distribution of wood processing and logging equipment. The commissioner may adopt rules further interpreting the industries covered under this subsection. For the purposes of this subsection, "standard industrial classification code" means the code identified in RCW 50.29.025(6)(c); and

(b)(i) Has received notice of termination or layoff; and

(ii) Is unlikely to return to employment in his or her principal occupation or previous industry because of a diminishing demand within his or her labor market for his or her skills in the occupation or industry; and

(c)(i) Is notified by the department of the requirements of this section and develops an individual training program that is submitted to the commissioner for approval not later than sixty days after the individual is notified of the requirements of this section, and enters the approved training program not later than ninety days after the date of the individual's termination or layoff, or ninety days after July 1, 1991, whichever is later, unless the department determines that the training is not available during the ninety-day period, in which case the individual shall enter training as soon as it is available; or

(ii) Is enrolled in training approved under this section on a full-time basis and maintains satisfactory progress in the training; and

(d) Does not receive a training allowance or stipend under the provisions of any federal or state law.

(5) For the purposes of this section:

(a) "Training program" means:

(i) A remedial education program determined to be necessary after counseling at the educational institution in which the individual enrolls pursuant to his or her approved training program; or

(ii) A vocational training program at an educational institution that:

(A) Is training for a labor demand occupation;

(B) Is likely to facilitate a substantial enhancement of the individual's marketable skills and earning power; and

(C) Does not include on-the-job training or other training under which the individual is paid by an employer for work performed by the individual during the time that the individual receives additional benefits under subsection (1) of this section.

(b) "Educational institution" means an institution of higher education as defined in RCW 28B.10.016 or an educational institution as defined in RCW 28C.04.410(3).

(c) "Training allowance or stipend" means discretionary use, cash-in-hand payments available to the individual to be used as the individual sees fit, but does not mean direct or indirect compensation for training costs, such as tuition or books and supplies.

(6) The commissioner shall adopt rules as necessary to implement this section. [1991 c 315 § 4.]

Intent—1991 c 315: See note following RCW 50.12.270.

Severability—Conflict with federal requirements—Effective date—1991 c 315: See RCW 50.70.900 through 50.70.902.

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

Conflict with federal requirements—Severability—Effective date—1987 c 111: See notes following RCW 50.12.220.

Chapter 50.24

CONTRIBUTIONS BY EMPLOYERS

Sections

- 50.24.110 Notice and order to withhold and deliver.
50.24.210 Contributions due and payable upon termination or disposal of business—Successor liability.

50.24.110 Notice and order to withhold and deliver.

The commissioner is hereby authorized to issue to any person, firm, corporation, political subdivision, or department of the state, a notice and order to withhold and deliver property of any kind whatsoever when the commissioner has reason to believe that there is in the possession of such person, firm, corporation, political subdivision, or department, property which is due, owing, or belonging to any person, firm, or corporation upon whom the department has served a benefit overpayment assessment or a notice and order of assessment for unemployment compensation contributions, interest, or penalties. The effect of a notice to withhold and deliver shall be continuous from the date such notice and order to withhold and deliver is first made until the liability is satisfied or becomes unenforceable because of a lapse of time.

The notice and order to withhold and deliver shall be served by the sheriff or the sheriff's deputy of the county wherein the service is made, by certified mail, return receipt requested, or by any duly authorized representative of the commissioner. Any person, firm, corporation, political subdivision, or department upon whom service has been made is hereby required to answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice.

In the event there is in the possession of any such person, firm, corporation, political subdivision, or department, any property which may be subject to the claim of the employment security department of the state, such property shall be delivered forthwith to the commissioner or the commissioner's duly authorized representative upon demand to be held in trust by the commissioner for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability, or in the alternative, there shall be furnished a good and sufficient bond satisfactory to the commissioner conditioned upon final determination of liability.

Should any person, firm, or corporation fail to make answer to an order to withhold and deliver within the time prescribed herein, it shall be lawful for the court, after the time to answer such order has expired, to render judgment by default against such person, firm, or corporation for the full amount claimed by the commissioner in the notice to withhold and deliver, together with costs. [1990 c 245 § 6; 1987 c 111 § 5; 1979 ex.s. c 190 § 7; 1947 c 215 § 20; 1945 c 35 § 99; Rem. Supp. 1947 § 9998–237.]

50.24.210 Contributions due and payable upon termination or disposal of business—Successor liability. Whenever any employer quits business, or sells out, exchanges, or otherwise disposes of the employer's business or stock of goods, any contributions payable under this title shall become immediately due and payable, and the employer shall, within ten days, make a return and pay the contributions due; and any person who becomes a successor to such business shall become liable for the full amount of the contributions and withhold from the purchase price a sum sufficient to pay any contributions due from the employer until such time as the employer produces a receipt from the employment security department showing payment in full of any contributions due or a certificate that no contribution is due and, if such contribution is not paid by the employer within ten days from the date of such sale, exchange, or disposal, the successor shall become liable for the payment of the full amount of contributions, and the payment thereof by such successor shall, to the extent thereof, be deemed a payment upon the purchase price, and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due such successor from the employer.

No successor may be liable for any contributions due from the person from whom that person has acquired a business or stock of goods if that person gives written notice to the employment security department of such acquisition and no assessment is issued by the department within one hundred eighty days of receipt of such notice against the former operator of the business and a copy thereof mailed to such successor. [1991 c 117 § 4.]

Conflict with federal requirements—Severability—Effective dates—1991 c 117: See notes following RCW 50.04.030.

Chapter 50.29

EMPLOYER EXPERIENCE RATING

Sections

- 50.29.020 Experience rating accounts—Enumeration of benefits not charged.
50.29.025 Contribution rates.
50.29.070 Notice of employer benefit charges and rate of contribution—Request for review and redetermination—Petition for hearing upon denial—Further appeal.

50.29.020 Experience rating accounts—Enumeration of benefits not charged. (1) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department. Benefits paid to any

eligible individuals shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(2) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individuals later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer.

(b) Benefits paid to an individual under the provisions of RCW 50.12.050 shall not be charged to the account of any contribution paying employer if the wage credits earned in this state by the individual during his or her base year are less than the minimum amount necessary to qualify the individual for unemployment benefits.

(c) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer.

(d) Benefits paid which represent the state's share of benefits payable under chapter 50.22 RCW shall not be charged to the experience rating account of any contribution paying employer.

(e) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(f)(i) Benefits paid to an individual as the result of a determination by the commissioner that no stoppage of work exists, pursuant to RCW 50.20.090, shall not be charged to the experience rating account of any contribution paying employer.

(ii) Benefits paid to an individual under RCW 50.20.090(1) for weeks of unemployment ending before February 20, 1987, shall not be charged to the experience rating account of any base year employer.

(g) In the case of individuals identified under RCW 50.20.015, benefits paid with respect to a calendar quarter, which exceed the total amount of wages earned in the state of Washington in the higher of two corresponding calendar quarters included within the individual's determination period, as defined in RCW 50.20.015, shall not be charged to the experience rating account of any contribution paying employer.

(h) Beginning July 1, 1985, a contribution-paying base year employer, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if:

(i) The benefit charges result from payment to an individual who last left the employ of such employer voluntarily for reasons not attributable to the employer, or was discharged for misconduct connected with his or her work; and

(ii) The employer requests relief of charges in writing within thirty days following mailing to the last known address of the notification of the initial determination of such a claim, stating the date and reason for the last leaving; and

(iii) Upon investigation of the separation, the commissioner rules that the relief should be granted.

(i) An employer who employed a claimant during the claimant's base year, and who continues to employ the claimant, is eligible for relief of benefit charges if relief is requested in writing within thirty days of notification by the department of the claimant's application for initial determination of eligibility. Relief of benefit charges shall cease when the employment relationship with the claimant ends. This subsection shall not apply to shared work employers under chapter 50.60 RCW.

(j) Benefits paid to an individual who does not successfully complete an approved on-the-job training program under RCW 50.12.240 shall not be charged to the experience rating account of the contribution paying employer who provided the approved on-the-job training.

(k) Benefits paid resulting from a closure or severe curtailment of operations at the employer's plant, building, work site, or facility due to damage caused by fire, flood, or other natural disaster shall not be charged to the experience rating account of the employer if:

(i) The employer petitions for relief of charges; and

(ii) The commissioner approves granting relief of charges. [1991 c 129 § 1; 1988 c 27 § 1. Prior: 1987 c 213 § 3; 1987 c 2 § 2; prior: 1985 c 299 § 1; 1985 c 270 § 2; 1985 c 42 § 1; 1984 c 205 § 7; 1975 1st ex.s. c 228 § 6; 1970 ex.s. c 2 § 11.]

Conflict with federal requirements—1988 c 27: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state." [1988 c 27 § 2.]

Construction—1987 c 213: See note following RCW 50.29.010.

Applicability—Effective date—Severability—1987 c 2: See notes following RCW 50.20.090.

Conflict with federal requirements—1985 c 42: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1985 c 42 § 2.]

Severability—1985 c 42: "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." [1985 c 42 § 3.]

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

"Determination period" defined for purposes of RCW 50.29.020: RCW 50.20.015.

50.29.025 Contribution rates. The contribution rate for each employer shall be determined under this section.

(1) A fund balance ratio shall be determined by dividing the balance in the unemployment compensation fund as of the June 30th immediately preceding the rate year by the total remuneration paid by all employers subject to contributions during the second calendar year preceding the rate year and reported to the department by the following March 31st. The division shall be carried to the fourth decimal place with the remaining fraction, if any, disregarded. The fund balance ratio shall be expressed as a percentage.

(2) The interval of the fund balance ratio, expressed as a percentage, shall determine which tax schedule in subsection (5) of this section shall be in effect for assigning tax rates for the rate year. The intervals for determining the effective tax schedule shall be:

Interval of the Fund Balance Ratio Expressed as a Percentage	Effective Tax Schedule
3.40 and above	A
2.90 to 3.39	B
2.40 to 2.89	C
1.90 to 2.39	D
1.40 to 1.89	E
Less than 1.40	F

(3) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (a) Identification number; (b) benefit ratio; (c) taxable payrolls for the four calendar quarters immediately preceding the computation date and reported to the department by the cut-off date; (d) a cumulative total of taxable payrolls consisting of the employer's taxable payroll plus the taxable payrolls of all other employers preceding him or her in the array; and (e) the percentage equivalent of the cumulative total of taxable payrolls.

(4) Each employer in the array shall be assigned to one of twenty rate classes according to the percentage intervals of cumulative taxable payrolls set forth in subsection (5) of this section: PROVIDED, That if an employer's taxable payroll falls within two or more rate classes, the employer and any other employer with the same benefit ratio shall be assigned to the lowest rate class which includes any portion of the employer's taxable payroll.

(5) The contribution rate for each employer in the array shall be the rate specified in the following table for the rate class to which he or she has been assigned, as determined under subsection (4) of this section, within

the tax schedule which is to be in effect during the rate year:

Percent of Cumulative Taxable Payrolls		Schedule of Contribution Rates for Effective Tax Schedule						
From	To	Rate Class	A	B	C	D	E	F
0.00	5.00	1	0.48	0.58	0.98	1.48	1.88	2.48
5.01	10.00	2	0.48	0.78	1.18	1.68	2.08	2.68
10.01	15.00	3	0.58	0.98	1.38	1.78	2.28	2.88
15.01	20.00	4	0.78	1.18	1.58	1.98	2.48	3.08
20.01	25.00	5	0.98	1.38	1.78	2.18	2.68	3.18
25.01	30.00	6	1.18	1.58	1.98	2.38	2.78	3.28
30.01	35.00	7	1.38	1.78	2.18	2.58	2.98	3.38
35.01	40.00	8	1.58	1.98	2.38	2.78	3.18	3.58
40.01	45.00	9	1.78	2.18	2.58	2.98	3.38	3.78
45.01	50.00	10	1.98	2.38	2.78	3.18	3.58	3.98
50.01	55.00	11	2.28	2.58	2.98	3.38	3.78	4.08
55.01	60.00	12	2.48	2.78	3.18	3.58	3.98	4.28
60.01	65.00	13	2.68	2.98	3.38	3.78	4.18	4.48
65.01	70.00	14	2.88	3.18	3.58	3.98	4.38	4.68
70.01	75.00	15	3.08	3.38	3.78	4.18	4.58	4.78
75.01	80.00	16	3.28	3.58	3.98	4.38	4.68	4.88
80.01	85.00	17	3.48	3.78	4.18	4.58	4.88	4.98
85.01	90.00	18	3.88	4.18	4.58	4.88	4.98	5.18
90.01	95.00	19	4.28	4.58	4.98	5.08	5.18	5.38
95.01	100.00	20	5.40	5.40	5.40	5.40	5.40	5.40

(6) The contribution rate for each employer not qualified to be in the array shall be as follows:

(a) Employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due shall be assigned the contribution rate of five and four-tenths percent, except employers who have an approved agency-deferred payment contract by September 30 of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to five and four-tenths percent for the current rate year;

(b) The contribution rate for employers exempt as of December 31, 1989, who are newly covered under the section 78, chapter 380, Laws of 1989 amendment to RCW 50.04.150 and not yet qualified to be in the array shall be 2.5 percent for employers whose standard industrial code is "013", "016", "017", "018", "019", "021", or "081"; and

(c) For all other employers not qualified to be in the array, the contribution rate shall be a rate equal to the average industry rate as determined by the commissioner; however, the rate may not be less than one percent. Assignment of employers by the commissioner to industrial classification, for purposes of this subsection, shall be in accordance with established classification practices found in the "Standard Industrial Classification Manual" issued by the federal office of management and budget to the third digit provided in the Standard Industrial Classification code. [1990 c 245 § 7;

1989 c 380 § 79; 1987 c 171 § 3; 1985 ex.s. c 5 § 7; 1984 c 205 § 5.]

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

Effective date—1989 c 380 §§ 78 through 81: See note following RCW 50.04.150.

Conflict with federal requirements—1989 c 380: See note following RCW 50.04.150.

Severability—1989 c 380: See RCW 15.58.942.

Conflict with federal requirements—Severability—1987 c 171: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

50.29.070 Notice of employer benefit charges and rate of contribution—Request for review and redetermination—Petition for hearing upon denial—Further appeal. Within a reasonable time after the computation date each employer shall be notified of the employer's rate of contribution as determined for the succeeding rate year and factors used in the calculation.

Any employer dissatisfied with the benefit charges made to the employer's account for the twelve-month period immediately preceding the computation date or with his or her determined rate may file a request for review and redetermination with the commissioner within thirty days of the mailing of the notice to the employer, showing the reason for such request. Should such request for review and redetermination be denied, the employer may, within thirty days of the mailing of such notice of denial, file with the appeal tribunal a petition for hearing which shall be heard in the same manner as a petition for denial of refund. The appellate procedure prescribed by this title for further appeal shall apply to all denials of review and redetermination under this section. [1990 c 245 § 8; 1983 1st ex.s. c 23 § 19; 1973 1st ex.s. c 158 § 14; 1970 ex.s. c 2 § 16.]

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Appeal on denial of refund: RCW 50.32.030, 50.32.050.

Appeal to the courts: RCW 50.32.120.

Review by commissioner: RCW 50.32.070.

Chapter 50.44

SPECIAL COVERAGE PROVISIONS

Sections

50.44.050	Benefits payable, terms and conditions.
50.44.060	Financing benefits paid employees of nonprofit organizations—Election to make payments in lieu of contributions.

50.44.050 Benefits payable, terms and conditions. Except as otherwise provided in subsections (1) through

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(4) of this section, benefits based on services in employment covered by or pursuant to this chapter shall be payable on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this title.

(1) Benefits based on service in an instructional, research or principal administrative capacity for an educational institution shall not be paid to an individual for any week of unemployment which commences during the period between two successive academic years or terms (or, when an agreement provides instead for a similar period between two regular but not successive terms, during such period) if such individual performs such services in the first of such academic years or terms and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms. Any employee of a common school district who is presumed to be reemployed pursuant to RCW 28A.405.210 shall be deemed to have a contract for the ensuing term.

(2) Benefits shall not be paid based on services in any other capacity for an educational institution for any week of unemployment which commences during the period between two successive academic years or terms, if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms: PROVIDED, That if benefits are denied to any individual under this subsection and that individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, the individual is entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subsection.

(3) Benefits shall not be paid based on any services described in subsections (1) and (2) of this section for any week of unemployment which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(4) Benefits shall not be paid (as specified in subsections (1), (2), or (3) of this section) based on any services described in subsections (1) or (2) of this section to any individual who performed such services in an educational institution while in the employ of an educational service district which is established pursuant to chapter 28A.310 RCW and exists to provide services to local school districts. [1990 c 33 § 587; 1984 c 140 § 2; 1983 1st ex.s. c 23 § 23; 1981 c 35 § 12; 1980 c 74 § 2; 1977 ex.s. c 292 § 18; 1975 1st ex.s. c 288 § 17; 1973 c 73 § 10; 1971 c 3 § 22.]

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

Effective date—Applicability—1984 c 140: "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 [March 7, 1984]. This act shall apply to weeks of unemployment beginning on or after April 1, 1984." [1984 c 140 § 3.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

Severability—Effective dates—1980 c 74: See notes following RCW 50.04.323.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

Effective dates—1973 c 73: See note following RCW 50.04.030.

50.44.060 Financing benefits paid employees of nonprofit organizations—Election to make payments in lieu of contributions. Benefits paid to employees of "nonprofit organizations" shall be financed in accordance with the provisions of this section. For the purpose of this section and RCW 50.44.070, the term "nonprofit organization" is limited to those organizations described in RCW 50.44.010, and joint accounts composed exclusively of such organizations.

(1) Any nonprofit organization which is, or becomes subject to this title on or after January 1, 1972 shall pay contributions under the provisions of RCW 50.24.010 and chapter 50.29 RCW, unless it elects, in accordance with this subsection, to pay to the commissioner for the unemployment compensation fund an amount equal to the full amount of regular and additional benefits and one-half of the amount of extended benefits paid to individuals for weeks of unemployment that are based upon wages paid or payable during the effective period of such election to the extent that such payments are attributable to service in the employ of such nonprofit organization.

(a) Any nonprofit organization which becomes subject to this title after January 1, 1972 may elect to become liable for payments in lieu of contributions for a period of not less than twelve months beginning with the date on which such subjectivity begins by filing a written notice of its election with the commissioner not later than thirty days immediately following the date of the determination of such subjectivity.

(b) Any nonprofit organization which makes an election in accordance with paragraph (a) of this subsection will continue to be liable for payments in lieu of contributions until it files with the commissioner a written notice terminating its election not later than thirty days prior to the beginning of the taxable year for which such termination shall first be effective.

(c) Any nonprofit organization which has been paying contributions under this title for a period subsequent to January 1, 1972 may change to a reimbursable basis by filing with the commissioner not later than thirty days prior to the beginning of any taxable year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next year.

(d) The commissioner may for good cause extend the period within which a notice of election, or a notice of

termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1969.

(e) The commissioner, in accordance with such regulations as the commissioner may prescribe, shall notify each nonprofit organization of any determination which the commissioner may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Any nonprofit organization subject to such determination and dissatisfied with such determination may file a request for review and redetermination with the commissioner within thirty days of the mailing of the determination to the organization. Should such request for review and redetermination be denied, the organization may, within ten days of the mailing of such notice of denial, file with the appeal tribunal a petition for hearing which shall be heard in the same manner as a petition for denial of refund. The appellate procedure prescribed by this title for further appeal shall apply to all denials of review and redetermination under this paragraph.

(2) Payments in lieu of contributions shall be made in accordance with the provisions of this section including either paragraph (a) or (b) of this subsection.

(a) At the end of each calendar quarter, the commissioner shall bill each nonprofit organization or group of such organizations which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular and additional benefits plus one-half of the amount of extended benefits paid during such quarter that is attributable to service in the employ of such organization.

(b)(i) Each nonprofit organization that has elected payments in lieu of contributions may request permission to make such payments as provided in this paragraph. Such method of payment shall become effective upon approval by the commissioner.

(ii) At the end of each calendar quarter, or at the end of such other period as determined by the commissioner, the commissioner shall bill each nonprofit organization for an amount representing one of the following:

(A) The percentage of its total payroll for the immediately preceding calendar year as the commissioner shall determine. Such determination shall be based each year on the average benefit costs attributable to service in the employ of nonprofit organizations during the preceding calendar year.

(B) For any organization which did not pay wages throughout the four calendar quarters of the preceding calendar year, such percentage of its payroll during such year as the commissioner shall determine.

(iii) At the end of each taxable year, the commissioner may modify the quarterly percentage of payroll thereafter payable by the nonprofit organization in order to minimize excess or insufficient payments.

(iv) At the end of each taxable year, the commissioner shall determine whether the total of payments for such year made by a nonprofit organization is less than, or in excess of, the total amount of regular and additional benefits plus one-half of the amount of extended benefits paid to individuals during such taxable year based

on wages attributable to service in the employ of such organization. Each nonprofit organization whose total payments for such year are less than the amount so determined shall be liable for payment of the unpaid balance to the fund in accordance with paragraph (c). If the total payments exceed the amount so determined for the taxable year, all of the excess payments will be retained in the fund as part of the payments which may be required for the next taxable year, or a part of the excess may, at the discretion of the commissioner, be refunded from the fund or retained in the fund as part of the payments which may be required for the next taxable year.

(c) Payment of any bill rendered under paragraph (a) or (b) shall be made not later than thirty days after such bill was mailed to the last known address of the nonprofit organization or was otherwise delivered to it, and if not paid within such thirty days, the reimbursement payments itemized in the bill shall be deemed to be delinquent and the whole or part thereof remaining unpaid shall bear interest and penalties from and after the end of such thirty days at the rate and in the manner set forth in RCW 50.12.220 and 50.24.040.

(d) Payments made by any nonprofit organization under the provisions of this section shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization. Any deduction in violation of the provisions of this paragraph shall be unlawful.

(3) Each employer that is liable for payments in lieu of contributions shall pay to the commissioner for the fund the total amount of regular and additional benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with the provisions of paragraphs (a) and (b) of this subsection.

(a) If benefits paid to an individual are based on wages paid by one or more employers that are liable for payments in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.

(b) If benefits paid to an individual are based on wages paid by two or more employers that are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the

individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers. [1990 c 245 § 9; 1983 1st ex.s. c 23 § 24; 1977 ex.s. c 292 § 19; 1971 c 3 § 23.]

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Chapter 50.67

WASHINGTON STATE JOB TRAINING COORDINATING COUNCIL

Sections

- | | |
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| 50.67.010 | Council created. |
| 50.67.020 | Membership of council—Assistance to work force training and education coordinating board. |
| 50.67.900 | Effective dates—Severability—1991 c 238. |

50.67.010 Council created. (1) There is hereby created the Washington state job training coordinating council for so long as a state council is required by federal law or regulation as a condition for receipt of federal funds. The council shall perform all duties of state job training coordinating council as specified in the federal job training partnership act, P.L. 97-300, as amended, including the preparation of a coordination and special services plan for a two-year period, consistent with the state comprehensive plan for work force training and education prepared by the work force training and education coordinating board as provided for in RCW 28C.18.060.

(2) The work force training and education coordinating board shall monitor the need for the council as described in subsection (1) of this section, and, if that need no longer exists, propose legislation to terminate the council. [1991 c 238 § 14.]

50.67.020 Membership of council—Assistance to work force training and education coordinating board.

(1) Current members of the Washington state job training coordinating council appointed pursuant to P.L. 97-300, as amended, shall serve as the state council for purposes of this chapter until new appointments are made consistent with this section.

(2) New appointments to the state council shall be made by July 1, 1991. Members of the Washington state job training council shall be appointed by the governor as required by federal law and shall be representative of the population of the state with regard to sex, race, ethnic background, and geographical distribution. To the maximum extent feasible, the governor shall give consideration to providing overlapping membership with the membership of the work force training and education coordinating board. One voting member of the council shall be a representative of the administrators for the service delivery areas established under P.L. 97-300.

One voting member of the council shall be a representative of the private industry councils established under P.L. 97-300.

(3) The Washington state job training coordinating council shall provide staff and allocate funds to the work force training and education coordinating board, as appropriate, to carry out the overlapping functions of the two bodies. [1991 c 238 § 15.]

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

Chapter 50.70 PROGRAMS FOR DISLOCATED FOREST PRODUCTS WORKERS

Sections	
50.70.010	Definitions.
50.70.020	Purpose—Displacement of employed workers prohibited.
50.70.030	Employment opportunities—Benefits.
50.70.040	Recruitment—Career orientation services—Career counseling.
50.70.050	Department of natural resources duties.
50.70.900	Severability—1991 c 315.
50.70.901	Conflict with federal requirements—1991 c 315.
50.70.902	Effective date—1991 c 315.

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

(1) "Department" means the employment security department.

(2) "Dislocated forest products worker" means a forest products worker who: (a)(i) Has been terminated or received notice of termination from employment and is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for his or her skills in that occupation or industry; or (ii) is self-employed and has been displaced from his or her business because of the diminishing demand for the business's services or goods; and (b) at the time of last separation from employment, resided in or was employed in a timber impact area.

(3) "Forest products worker" means a worker in the forest products industries affected by the reduction of forest fiber enhancement, transportation, or production. The workers included within this definition shall be determined by the employment security department, but shall include workers employed in the industries assigned the major group standard industrial classification codes "24" and "26" and the industries involved in the harvesting and management of logs, transportation of logs and wood products, processing of wood products, and the manufacturing and distribution of wood processing and logging equipment. The commissioner may adopt rules further interpreting these definitions. For the purposes of this subsection, "standard industrial classification code" means the code identified in RCW 50.29.025(6)(c).

(4) "Program" means the employment and career orientation program for dislocated forest products workers

administered by the employment security department in conjunction with the department of natural resources.

(5) "Enrollee" means any person enrolled in the program.

(6) "Project" means the natural resource worker project.

(7) "Timber impact area" means a county having a population of less than five hundred thousand, or a city or town located within a county having a population of less than five hundred thousand, and meeting two of the following three criteria, as determined by the employment security department, for the most recent year such data is available: (a) A lumber and wood products employment location quotient at or above the state average; (b) projected or actual direct lumber and wood products job losses of one hundred positions or more, except counties having a population greater than two hundred thousand but less than five hundred thousand must have direct lumber and wood products job losses of one thousand positions or more; or (c) an annual unemployment rate twenty percent or more above the state average. [1991 c 315 § 5.]

Intent—1991 c 315: See note following RCW 50.12.270.

50.70.020 Purpose—Displacement of employed workers prohibited. It is the purpose of this chapter to establish programs that offer dislocated forest products workers, in timber impact areas, opportunities for forest-related employment that utilizes their unique skills. Employment under the program shall not result in the displacement or partial displacement of currently employed workers. This includes, but is not limited to, state employees or currently or normally contracted service employees. [1991 c 315 § 6.]

Intent—1991 c 315: See note following RCW 50.12.270.

50.70.030 Employment opportunities—Benefits. (1) Employment opportunities under the program shall consist of activities that improve the value of state lands and waters. These activities may include, but are not limited to, thinning and precommercial thinning, pruning, slash removal, reforestation, fire suppression, trail maintenance, maintenance of recreational facilities, dike repair, development and maintenance of tourist facilities, and stream enhancement.

(2) Enrollees in the program shall receive medical and dental benefits as provided under chapter 41.05 RCW, but are exempt from the provisions of chapter 41.06 RCW. Each week, enrollees shall not work more than thirty-two hours in this program and must participate in eight hours of career orientation as established in RCW 50.70.040. Participation in the program is limited to six months. [1991 c 315 § 7.]

Intent—1991 c 315: See note following RCW 50.12.270.

50.70.040 Recruitment—Career orientation services—Career counseling. (1) The department shall recruit program applicants and provide employment opportunities by:

(a) Notifying dislocated forest products workers who are receiving unemployment benefits, or dislocated forest products workers who have exhausted unemployment benefits, of their eligibility for the program.

(b) Establishing procedures for dislocated forest products workers to apply to the program.

(c) Developing a pool of workers eligible to enroll in the program.

(d) Contracting with the department of natural resources to provide employment opportunities for not less than two hundred eligible enrollees.

(2) The department shall provide career orientation services to enrollees in the program. The career orientation services shall include, but are not limited to, counseling on employment options and assistance in accessing retraining programs, and assistance in accessing social service programs.

(3) The department shall provide at least eight hours of career counseling each week for program enrollees. [1991 c 315 § 8.]

Intent—1991 c 315: See note following RCW 50.12.270.

50.70.050 Department of natural resources duties.

(1) The department of natural resources shall enroll candidates in the program from a pool of eligible workers developed by the department.

(2) The department of natural resources shall provide compensation for enrollees. [1991 c 315 § 9.]

Intent—1991 c 315: See note following RCW 50.12.270.

50.70.900 Severability—1991 c 315. 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. [1991 c 315 § 31.]

50.70.901 Conflict with federal requirements—1991 c 315. If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state. [1991 c 315 § 32.]

50.70.902 Effective date—1991 c 315. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 21, 1991], except for section 4 of this act, which shall take effect July 1, 1991. [1991 c 315 § 33.]

Title 51

INDUSTRIAL INSURANCE

Chapters

51.08	Definitions.
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Chapter 51.08

DEFINITIONS

Sections

51.08.070	"Employer"—Exception. (Effective January 1, 1992.)
51.08.180	"Worker"—Exceptions. (Effective January 1, 1992.)
51.08.195	Employer and worker—Alternative exception. (Effective January 1, 1992.)

51.08.070 "Employer"—Exception. (Effective January 1, 1992.) "Employer" means any person, body of persons, corporate or otherwise, and the legal representatives of a deceased employer, all while engaged in this state in any work covered by the provisions of this title, by way of trade or business, or who contracts with one or more workers, the essence of which is the personal labor of such worker or workers. Or as a separate alternative, persons or entities are not employers when they contract or agree to remunerate the services performed by an individual who meets the tests set forth in subsections (1) through (6) of RCW 51.08.195.

For the purposes of this title, a contractor registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW is not an employer when:

(1) Contracting with any other person, firm, or corporation currently engaging in a business which is registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW;

(2) The person, firm, or corporation has a principal place of business which would be eligible for a business deduction for internal revenue service tax purposes other than that furnished by the contractor for which the business has contracted to furnish services;

(3) The person, firm, or corporation maintains a separate set of books or records that reflect all items of income and expenses of the business; and

(4) The work which the person, firm, or corporation has contracted to perform is:

(a) The work of a contractor as defined in RCW 18.27.010; or

(b) The work of installing wires or equipment to convey electric current or installing apparatus to be operated by such current as it pertains to the electrical industry as described in chapter 19.28 RCW. [1991 c

246 § 2; 1981 c 128 § 1; 1977 ex.s. c 350 § 12; 1971 ex.s. c 289 § 1; 1961 c 23 § 51.08.070. Prior: 1957 c 70 § 9; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective date—Conflict with federal requirements—1991 c 246: See notes following RCW 51.08.195.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.08.180 "Worker"—Exceptions. (Effective January 1, 1992.) (1) "Worker" means every person in this state who is engaged in the employment of an employer under this title, whether by way of manual labor or otherwise in the course of his or her employment; also every person in this state who is engaged in the employment of or who is working under an independent contract, the essence of which is his or her personal labor for an employer under this title, whether by way of manual labor or otherwise, in the course of his or her employment, or as a separate alternative, a person is not a worker if he or she meets the tests set forth in subsections (1) through (6) of RCW 51.08.195: PROVIDED, That a person is not a worker for the purpose of this title, with respect to his or her activities attendant to operating a truck which he or she owns, and which is leased to a common or contract carrier.

(2) For the purposes of this title, any person, firm, or corporation currently engaging in a business which is registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW is not a worker when:

(a) Contracting to perform work for any contractor registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW;

(b) The person, firm, or corporation has a principal place of business which would be eligible for a business deduction for internal revenue service tax purposes other than that furnished by the contractor for which the business has contracted to furnish services;

(c) The person, firm, or corporation maintains a separate set of books or records that reflect all items of income and expenses of the business; and

(d) The work which the person, firm, or corporation has contracted to perform is:

(i) The work of a contractor as defined in RCW 18.27.010; or

(ii) The work of installing wires or equipment to convey electric current or installing apparatus to be operated by such current as it pertains to the electrical industry as described in chapter 19.28 RCW.

(3) Any person, firm, or corporation registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW including those performing work for any contractor registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW is a worker when the contractor supervises or controls the means by which the result is

accomplished or the manner in which the work is performed.

(4) For the purposes of this title, any person participating as a driver or back-up driver in commuter ride sharing, as defined in RCW 46.74.010(1), is not a worker while driving a ride-sharing vehicle on behalf of the owner or lessee of the vehicle. [1991 c 246 § 3; 1987 c 175 § 3; 1983 c 97 § 1; 1982 c 80 § 1; 1981 c 128 § 2; 1977 ex.s. c 350 § 15; 1961 c 23 § 51.08.180. Prior: 1957 c 70 § 20; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1937 c 211 § 2; RRS § 7674-1.]

Effective date—Conflict with federal requirements—1991 c 246: See notes following RCW 51.08.195.

51.08.195 Employer and worker—Alternative exception. (Effective January 1, 1992.) As a separate alternative to the definition of "employer" under RCW 51.08.070 and the definition of "worker" under RCW 51.08.180, services performed by an individual for remuneration shall not constitute employment subject to this title if it is shown that:

(1) The individual has been and will continue to be free from control or direction over the performance of the service, both under the contract of service and in fact; and

(2) The service is either outside the usual course of business for which the service is performed, or the service is performed outside all of the places of business of the enterprise for which the service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed; and

(3) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or the individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes; and

(4) On the effective date of the contract of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting; and

(5) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, the individual has established an account with the department of revenue, and other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington; and

(6) On the effective date of the contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of

the business which the individual is conducting. [1991 c 246 § 1.]

Effective date—1991 c 246: "This act shall take effect January 1, 1992." [1991 c 246 § 10.]

Conflict with federal requirements—1991 c 246: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1991 c 246 § 9.]

Chapter 51.12

EMPLOYMENTS AND OCCUPATIONS COVERED

Sections

51.12.020	Employments excluded. (Effective until January 1, 1992.)
51.12.020	Employments excluded. (Effective January 1, 1992.)
51.12.100	Maritime occupations—Segregation of payrolls—Common enterprise.
51.12.110	Elective adoption—Withdrawal—Cancellation. (Effective January 1, 1992.)
51.12.115	Repealed. (Effective January 1, 1992.)

51.12.020 Employments excluded. (Effective until January 1, 1992.) The following are the only employments which shall not be included within the mandatory coverage of this title:

(1) Any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed forty or more hours a week in such employment.

(2) Any person employed to do gardening, maintenance, repair, remodeling, or similar work in or about the private home of the employer.

(3) A person whose employment is not in the course of the trade, business, or profession of his or her employer and is not in or about the private home of the employer.

(4) Any person performing services in return for aid or sustenance only, received from any religious or charitable organization.

(5) Sole proprietors or partners: PROVIDED, That after July 26, 1981, sole proprietors or partners who for the first time register under chapter 18.27 RCW or become licensed for the first time under chapter 19.28 RCW shall be included under the mandatory coverage provisions of this title subject to the provisions of RCW 51.32.030. These persons may elect to withdraw from coverage under RCW 51.12.115.

(6) Any child under eighteen years of age employed by his parent or parents in agricultural activities on the family farm.

(7) Jockeys while participating in or preparing horses for race meets licensed by the Washington horse racing commission pursuant to chapter 67.16 RCW.

(8) Any officer of a corporation elected and empowered in accordance with the articles of incorporation or

bylaws of a corporation who at all times during the period involved is also a director and shareholder of the corporation. However, any corporation may elect to cover such officers who are in fact employees of the corporation in the manner provided by RCW 51.12.110.

(9) Services rendered by a musician or entertainer under a contract with a purchaser of the services, for a specific engagement or engagements when such musician or entertainer performs no other duties for the purchaser and is not regularly and continuously employed by the purchaser. A purchaser does not include the leader of a group or recognized entity who employs other than on a casual basis musicians or entertainers.

(10) Services performed by a booth renter as defined in RCW 18.16.020. However, a person exempted under this subsection may elect coverage under RCW 51.32-.030. [1991 c 324 § 18; 1987 c 316 § 2; 1983 c 252 § 1; 1982 c 63 § 15; 1981 c 128 § 3; 1979 c 128 § 1; 1977 ex.s. c 323 § 7; 1973 c 124 § 1; 1972 ex.s. c 43 § 7; 1971 ex.s. c 289 § 3; 1961 c 23 § 51.12.020. Prior: 1955 c 74 § 3; prior: 1947 c 281 § 1, part; 1943 c 210 § 1, part; 1939 c 41 § 1, part; 1937 c 211 § 1, part; 1927 c 310 § 1, part; 1921 c 182 § 1, part; 1919 c 131 § 1, part; 1911 c 74 § 2, part; Rem. Supp. 1947 § 7674, part.]

Severability—1991 c 324: See RCW 18.16.910.

Effective dates—**Implementation**—1982 c 63: See note following RCW 51.32.095.

Severability—**Effective date**—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.12.020 Employments excluded. (Effective January 1, 1992.) The following are the only employments which shall not be included within the mandatory coverage of this title:

(1) Any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed forty or more hours a week in such employment.

(2) Any person employed to do gardening, maintenance, repair, remodeling, or similar work in or about the private home of the employer.

(3) A person whose employment is not in the course of the trade, business, or profession of his or her employer and is not in or about the private home of the employer.

(4) Any person performing services in return for aid or sustenance only, received from any religious or charitable organization.

(5) Sole proprietors or partners.

(6) Any child under eighteen years of age employed by his or her parent or parents in agricultural activities on the family farm.

(7) Jockeys while participating in or preparing horses for race meets licensed by the Washington horse racing commission pursuant to chapter 67.16 RCW.

(8)(a) Except as otherwise provided in (b) of this subsection, any bona fide officer of a corporation voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation, who at all times during the period involved is also a bona fide director, and who is also a shareholder

of the corporation. Only such officers who exercise substantial control in the daily management of the corporation and whose primary responsibilities do not include the performance of manual labor are included within this subsection.

(b) Alternatively, a corporation that is not a "public company" as defined in *RCW 23B.01.400(19) may exempt eight or fewer bona fide officers, who are voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation and who exercise substantial control in the daily management of the corporation, from coverage under this title without regard to the officers' performance of manual labor if the exempted officer is a shareholder of the corporation, or may exempt any number of officers if all the exempted officers are related by blood within the third degree or marriage. If a corporation that is not a "public company" elects to be covered under subsection (8)(a) of this section, the corporation's election must be made on a form prescribed by the department and under such reasonable rules as the department may adopt.

(c) Determinations respecting the status of persons performing services for a corporation shall be made, in part, by reference to Title 23B RCW and to compliance by the corporation with its own articles of incorporation and bylaws. For the purpose of determining coverage under this title, substance shall control over form, and mandatory coverage under this title shall extend to all workers of this state, regardless of honorary titles conferred upon those actually serving as workers.

(d) A corporation may elect to cover officers who are exempted by this subsection in the manner provided by RCW 51.12.110.

(9) Services rendered by a musician or entertainer under a contract with a purchaser of the services, for a specific engagement or engagements when such musician or entertainer performs no other duties for the purchaser and is not regularly and continuously employed by the purchaser. A purchaser does not include the leader of a group or recognized entity who employs other than on a casual basis musicians or entertainers.

(10) Services performed by a newspaper carrier selling or distributing newspapers on the street or from house to house.

(11) Services performed by an insurance agent, insurance broker, or insurance solicitor, as defined in RCW 48.17.010, 48.17.020, and 48.17.030, respectively.

(12) Services performed by a booth renter as defined in RCW 18.16.020. However, a person exempted under this subsection may elect coverage under RCW 51.32-.030. [1991 c 324 § 18; 1991 c 246 § 4; 1987 c 316 § 2; 1983 c 252 § 1; 1982 c 63 § 15; 1981 c 128 § 3; 1979 c 128 § 1; 1977 ex.s. c 323 § 7; 1973 c 124 § 1; 1972 ex.s. c 43 § 7; 1971 ex.s. c 289 § 3; 1961 c 23 § 51.12.020. Prior: 1955 c 74 § 3; prior: 1947 c 281 § 1, part; 1943 c 210 § 1, part; 1939 c 41 § 1, part; 1937 c 211 § 1, part; 1927 c 310 § 1, part; 1921 c 182 § 1, part; 1919 c 131 § 1, part; 1911 c 74 § 2, part; Rem. Supp. 1947 § 7674, part.]

Reviser's note: (1) This section was amended by 1991 c 246 § 4 and by 1991 c 324 § 18, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

*(2) RCW 23B.01.400(19) was renumbered RCW 23B.01.400(20) by 1991 c 269 § 35.

Severability—1991 c 324: See RCW 18.16.910.

Effective date—**Conflict with federal requirements**—1991 c 246: See notes following RCW 51.08.195.

Effective dates—**Implementation**—1982 c 63: See note following RCW 51.32.095.

Severability—**Effective date**—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.12.100 Maritime occupations—Segregation of payrolls—Common enterprise. (1) The provisions of this title shall not apply to a master or member of a crew of any vessel, or to employers and workers for whom a right or obligation exists under the maritime laws or federal employees' compensation act for personal injuries or death of such workers.

(2) If an accurate segregation of payrolls of workers for whom such a right or obligation exists under the maritime laws cannot be made by the employer, the director is hereby authorized and directed to fix from time to time a basis for the approximate segregation of the payrolls of employees to cover the part of their work for which no right or obligation exists under the maritime laws for injuries or death occurring in such work, and the employer, if not a self-insurer, shall pay premiums on that basis for the time such workers are engaged in their work.

(3) Where two or more employers are simultaneously engaged in a common enterprise at one and the same site or place in maritime occupations under circumstances in which no right or obligation exists under the maritime laws for personal injuries or death of such workers, such site or place shall be deemed for the purposes of this title to be the common plant of such employers.

(4) In the event payments are made under this title prior to the final determination under the maritime laws or federal employees' compensation act, such benefits shall be repaid by the worker or beneficiary if recovery is subsequently made under the maritime laws or federal employees' compensation act. [1991 c 88 § 3; 1988 c 271 § 2; 1977 ex.s. c 350 § 21; 1975 1st ex.s. c 224 § 3; 1972 ex.s. c 43 § 11; 1961 c 23 § 51.12.100. Prior: 1931 c 79 § 1; 1925 ex.s. c 111 § 1; RRS § 7693a.]

Effective date—**Applicability**—1988 c 271 §§ 1-4: See note following RCW 51.12.102.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Ferry system employees in extrahazardous employment: RCW 47.64.070.

51.12.110 Elective adoption—Withdrawal—Cancellation. (Effective January 1, 1992.) Any employer who has in his or her employment any person or persons excluded from mandatory coverage pursuant to RCW 51.12.020 may file notice in writing with the director, on such forms as the department may provide, of his or her election to make such persons otherwise excluded subject to this title. The employer shall forthwith

display in a conspicuous manner about his or her works, and in a sufficient number of places to reasonably inform his or her workers of the fact, printed notices furnished by the department stating that he or she has so elected. Said election shall become effective upon the filing of said notice in writing. The employer and his or her workers shall be subject to all the provisions of this title and entitled to all of the benefits thereof: PROVIDED, That those who have heretofore complied with the foregoing conditions and are carried and considered by the department as within the purview of this title shall be deemed and considered as having fully complied with its terms and shall be continued by the department as entitled to all of the benefits and subject to all of the liabilities without other or further action. Any employer who has complied with this section may withdraw his or her acceptance of liability under this title by filing written notice with the director of the withdrawal of his or her acceptance. Such withdrawal shall become effective thirty days after the filing of such notice or on the date of the termination of the security for payment of compensation, whichever last occurs. The employer shall, at least thirty days before the effective date of the withdrawal, post reasonable notice of such withdrawal where the affected worker or workers work and shall otherwise notify personally the affected workers. Withdrawal of acceptance of this title shall not affect the liability of the department or self-insurer for compensation for any injury occurring during the period of acceptance.

The department shall have the power to cancel the elective adoption coverage if any required payments or reports have not been made. Cancellation by the department shall be no later than thirty days from the date of notice in writing by the department advising of cancellation being made. [1991 c 246 § 5; 1982 c 63 § 17; 1980 c 14 § 6. Prior: 1977 ex.s. c 350 § 22; 1977 ex.s. c 323 § 8; 1971 ex.s. c 289 § 85; 1961 c 23 § 51.12.110; prior: 1959 c 308 § 11; 1929 c 132 § 5; 1923 c 136 § 6; 1911 c 74 § 19; RRS § 7696.]

Effective date—Conflict with federal requirements—1991 c 246: See notes following RCW 51.08.195.

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.12.115 Repealed. (Effective January 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 51.14 SELF-INSURERS

Sections

51.14.020 Qualification as self-insurer—Application for certification—Security deposit or letter of credit—Reinsurance.

51.14.020 Qualification as self-insurer—Application for certification—Security deposit or letter of credit—Reinsurance. (1) An employer may qualify as a self-insurer by establishing to the director's satisfaction that he or she has sufficient financial ability to make certain the prompt payment of all compensation under this title and all assessments which may become due from such employer. Each application for certification as a self-insurer submitted by an employer shall be accompanied by payment of a fee of one hundred fifty dollars or such larger sum as the director shall find necessary for the administrative costs of evaluation of the applicant's qualifications. Any employer who has formerly been certified as a self-insurer and thereafter ceases to be so certified may not apply for certification within three years of ceasing to have been so certified.

(2)(a) A self-insurer may be required by the director to supplement existing financial ability by depositing in an escrow account in a depository designated by the director, money and/or corporate or governmental securities approved by the director, or a surety bond written by any company admitted to transact surety business in this state, or provide an irrevocable letter of credit issued by a federally or state chartered commercial banking institution authorized to conduct business in the state of Washington filed with the department. The money, securities, bond, or letter of credit shall be in an amount reasonably sufficient in the director's discretion to insure payment of reasonably foreseeable compensation and assessments but not less than the employer's normal expected annual claim liabilities and in no event less than one hundred thousand dollars. In arriving at the amount of money, securities, bond, or letter of credit required under this subsection, the director shall take into consideration the financial ability of the employer to pay compensation and assessments and his or her probable continuity of operation. However, a letter of credit shall be acceptable only if the self-insurer has a net worth of not less than five hundred million dollars as evidenced in an annual financial statement prepared by a qualified, independent auditor using generally accepted accounting principles. The money, securities, bond, or letter of credit so deposited shall be held by the director to secure the payment of compensation by the self-insurer and to secure payment of his or her assessments. The amount of security may be increased or decreased from time to time by the director. The income from any securities deposited may be distributed currently to the self-insurer.

(b) The letter of credit option authorized in (a) of this subsection shall not apply to self-insurers authorized under RCW 51.14.150 or to self-insurers who are counties, cities, or municipal corporations.

(3) Securities or money deposited by an employer pursuant to subsection (2) of this section shall be returned to him or her upon his or her written request provided the employer files the bond required by such subsection.

(4) If the employer seeking to qualify as a self-insurer has previously insured with the state fund, the director shall require the employer to make up his or her proper

share of any deficit or insufficiency in the state fund as a condition to certification as a self-insurer.

(5) A self-insurer may reinsure a portion of his or her liability under this title with any reinsurer authorized to transact such reinsurance in this state: PROVIDED, That the reinsurer may not participate in the administration of the responsibilities of the self-insurer under this title. Such reinsurance may not exceed eighty percent of the liabilities under this title.

(6) For purposes of the application of this section, the department may adopt separate rules establishing the security requirements applicable to units of local government. In setting such requirements, the department shall take into consideration the ability of the governmental unit to meet its self-insured obligations, such as but not limited to source of funds, permanency, and right of default.

(7) The director shall adopt rules to carry out the purposes of this section including, but not limited to, rules respecting the terms and conditions of letters of credit and the establishment of the appropriate level of net worth of the self-insurer to qualify for use of the letter of credit. Only letters of credit issued in strict compliance with the rules shall be deemed acceptable. [1990 c 209 § 1; 1986 c 57 § 1; 1977 ex.s. c 323 § 9; 1972 ex.s. c 43 § 16; 1971 ex.s. c 289 § 27.]

Effective date—1990 c 209 § 1: "Section 1 of this act shall take effect January 1, 1991." [1990 c 209 § 3.]

Intent—1986 c 57: See note following RCW 51.14.077.

Severability—**Effective date**—1977 ex.s. c 323: See notes following RCW 51.04.040.

Chapter 51.16

ASSESSMENT AND COLLECTION OF PREMIUMS—PAYROLLS AND RECORDS

Sections

- 51.16.110 New businesses or resumed or continued operations.
- 51.16.115 Repealed.

51.16.110 New businesses or resumed or continued operations. Every employer who shall enter into any business, or who shall resume operations in any work or plant after the final adjustment of his or her payroll in connection therewith, or who was formerly a self-insurer and wishes to continue his or her operations subject to this title, shall, before so commencing or resuming or continuing operations, as the case may be, notify the department of such fact. [1991 c 88 § 4; 1977 ex.s. c 323 § 12; 1971 ex.s. c 289 § 4; 1961 c 23 § 51.16.110. Prior: 1959 c 179 § 2; 1959 c 308 § 15; prior: 1957 c 70 § 50; 1951 c 236 § 4; 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676c, part.]

Severability—**Effective date**—1977 ex.s. c 323: See notes following 51.04.040.

Effective dates—**Severability**—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.115 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 51.28

NOTICE AND REPORT OF ACCIDENT—APPLICATION FOR COMPENSATION

Sections

- 51.28.070 Claim files and records confidential.

51.28.070 Claim files and records confidential. Information contained in the claim files and records of injured workers, under the provisions of this title, shall be deemed confidential and shall not be open to public inspection (other than to public employees in the performance of their official duties), but representatives of a claimant, be it an individual or an organization, may review a claim file or receive specific information therefrom upon the presentation of the signed authorization of the claimant. A claimant may review his or her claim file if the director determines, pursuant to criteria adopted by rule, that the review is in the claimant's interest. Employers or their duly authorized representatives may review any files of their own injured workers in connection with any pending claims. Physicians treating or examining workers claiming benefits under this title, or physicians giving medical advice to the department regarding any claim may, at the discretion of the department, inspect the claim files and records of injured workers, and other persons may make such inspection, at the department's discretion, when such persons are rendering assistance to the department at any stage of the proceedings on any matter pertaining to the administration of this title. [1990 c 209 § 2; 1977 ex.s. c 350 § 36; 1975 1st ex.s. c 224 § 6; 1961 c 23 § 51.28.070. Prior: 1957 c 70 § 51.]

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Chapter 51.32

COMPENSATION—RIGHT TO AND AMOUNT

Sections

- 51.32.050 Death benefits.
- 51.32.240 Payments made due to error, mistake, erroneous adjudication, fraud, etc.—Penalty—Appeal—Enforcement of orders.
- 51.32.300 State employee vocational rehabilitation coordinator.

51.32.050 Death benefits. (1) Where death results from the injury the expenses of burial not to exceed two thousand dollars shall be paid.

(2)(a) Where death results from the injury, a surviving spouse of a deceased worker eligible for benefits under this title shall receive monthly for life or until remarriage payments according to the following schedule:

(i) If there are no children of the deceased worker, sixty percent of the wages of the deceased worker but not less than one hundred eighty-five dollars;

(ii) If there is one child of the deceased worker and in the legal custody of such spouse, sixty-two percent of the wages of the deceased worker but not less than two hundred twenty-two dollars;

(iii) If there are two children of the deceased worker and in the legal custody of such spouse, sixty-four percent of the wages of the deceased worker but not less than two hundred fifty-three dollars;

(iv) If there are three children of the deceased worker and in the legal custody of such spouse, sixty-six percent of the wages of the deceased worker but not less than two hundred seventy-six dollars;

(v) If there are four children of the deceased worker and in the legal custody of such spouse, sixty-eight percent of the wages of the deceased worker but not less than two hundred ninety-nine dollars; or

(vi) If there are five or more children of the deceased worker and in the legal custody of such spouse, seventy percent of the wages of the deceased worker but not less than three hundred twenty-two dollars.

(b) Where the surviving spouse does not have legal custody of any child or children of the deceased worker or where after the death of the worker legal custody of such child or children passes from such surviving spouse to another, any payment on account of such child or children not in the legal custody of the surviving spouse shall be made to the person or persons having legal custody of such child or children. The amount of such payments shall be five percent of the monthly benefits payable as a result of the worker's death for each such child but such payments shall not exceed twenty-five percent. Such payments on account of such child or children shall be subtracted from the amount to which such surviving spouse would have been entitled had such surviving spouse had legal custody of all of the children and the surviving spouse shall receive the remainder after such payments on account of such child or children have been subtracted. Such payments on account of a child or children not in the legal custody of such surviving spouse shall be apportioned equally among such children.

(c) Payments to the surviving spouse of the deceased worker shall cease at the end of the month in which remarriage occurs: PROVIDED, That a monthly payment shall be made to the child or children of the deceased worker from the month following such remarriage in a sum equal to five percent of the wages of the deceased worker for one child and a sum equal to five percent for each additional child up to a maximum of five such children. Payments to such child or children shall be apportioned equally among such children. Such sum shall be in place of any payments theretofore made for the benefit of or on account of any such child or children. If the surviving spouse does not have legal custody of any child or children of the deceased worker, or if after the death of the worker, legal custody of such child or children passes from such surviving spouse to another, any payment on account of such child or children not in the legal custody of the surviving spouse shall be made to the person or persons having legal custody of such child or children.

(d) In no event shall the monthly payments provided in subsection (2) of this section exceed one hundred percent of the average monthly wage in the state as computed under RCW 51.08.018.

(e) In addition to the monthly payments provided for in (2)(a) through (2)(c) of this section, a surviving spouse or child or children of such worker if there is no surviving spouse, or dependent parent or parents, if there is no surviving spouse or child or children of any such deceased worker shall be forthwith paid the sum of one thousand six hundred dollars, any such children, or parents to share and share alike in said sum.

(f) Upon remarriage of a surviving spouse the monthly payments for the child or children shall continue as provided in this section, but the monthly payments to such surviving spouse shall cease at the end of the month during which remarriage occurs. However, after September 8, 1975, an otherwise eligible surviving spouse of a worker who died at any time prior to or after September 8, 1975, shall have an option of:

(i) Receiving, once and for all, a lump sum of twenty-four times the monthly compensation rate in effect on the date of remarriage allocable to the spouse for himself or herself pursuant to (2)(a)(i) of this section and subject to any modifications specified under (2)(d) of this section and RCW 51.32.075(3) or fifty percent of the then remaining annuity value of his or her pension, whichever is the lesser: PROVIDED, That if the injury occurred prior to July 28, 1991, the remarriage benefit lump sum available shall be as provided in the remarriage benefit schedules then in effect; or

(ii) If a surviving spouse does not choose the option specified in (2)(f)(i) of this section to accept the lump sum payment, the remarriage of the surviving spouse of a worker shall not bar him or her from claiming the lump sum payment authorized in (2)(f)(i) of this section during the life of the remarriage, or shall not prevent subsequent monthly payments to him or to her if the remarriage has been terminated by death or has been dissolved or annulled by valid court decree provided he or she has not previously accepted the lump sum payment.

(g) If the surviving spouse during the remarriage should die without having previously received the lump sum payment provided in (2)(f)(i) of this section, his or her estate shall be entitled to receive the sum specified under subsection (2)(f)(i) of this section or fifty percent of the then remaining annuity value of his or her pension whichever is the lesser.

(h) The effective date of resumption of payments under (2)(f)(ii) of this section to a surviving spouse based upon termination of a remarriage by death, annulment, or dissolution shall be the date of the death or the date the judicial decree of annulment or dissolution becomes final and when application for the payments has been received.

(i) If it should be necessary to increase the reserves in the reserve fund or to create a new pension reserve fund as a result of the amendments in chapter 45, Laws of 1975-'76 2nd ex. sess., the amount of such increase in pension reserve in any such case shall be transferred to the reserve fund from the supplemental pension fund.

(3) If there is a child or children and no surviving spouse of the deceased worker or the surviving spouse is not eligible for benefits under this title, a sum equal to thirty-five percent of the wages of the deceased worker

shall be paid monthly for one child and a sum equivalent to fifteen percent of such wage shall be paid monthly for each additional child, the total of such sum to be divided among such children, share and share alike: PROVIDED, That benefits under this subsection or subsection (4) shall not exceed sixty-five percent of the wages of the deceased worker at the time of his or her death or one hundred percent of the average monthly wage in the state as defined in RCW 51.08.018, whichever is the lesser of the two sums.

(4) In the event a surviving spouse receiving monthly payments dies, the child or children of the deceased worker shall receive the same payment as provided in subsection (3) of this section.

(5) If the worker leaves no surviving spouse or child, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty percent of the average monthly support actually received by such dependent from the worker during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed sixty-five percent of the wages of the deceased worker at the time of the death or one hundred percent of the average monthly wage in the state as defined in RCW 51.08.018, whichever is the lesser of the two sums. If any dependent is under the age of eighteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent reaches the age of eighteen years except such payments shall continue until the dependent reaches age twenty-three while permanently enrolled at a full time course in an accredited school. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

(6) For claims filed prior to July 1, 1986, if the injured worker dies during the period of permanent total disability, whatever the cause of death, leaving a surviving spouse, or child, or children, the surviving spouse or child or children shall receive benefits as if death resulted from the injury as provided in subsections (2) through (4) of this section. Upon remarriage or death of such surviving spouse, the payments to such child or children shall be made as provided in subsection (2) of this section when the surviving spouse of a deceased worker remarries.

(7) For claims filed on or after July 1, 1986, every worker who becomes eligible for permanent total disability benefits shall elect an option as provided in RCW 51.32.067. [1991 c 88 § 2; 1988 c 161 § 2; 1986 c 58 § 3; 1982 c 63 § 18; 1977 ex.s. c 350 § 42; 1975-'76 2nd ex.s. c 45 § 2; 1975 1st ex.s. c 179 § 1; 1973 1st ex.s. c 154 § 96; 1972 ex.s. c 43 § 19; 1971 ex.s. c 289 § 7; 1965 ex.s. c 122 § 1; 1961 c 274 § 1; 1961 c 23 § 51.32.050. Prior: 1957 c 70 § 30; 1951 c 115 § 1; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Benefit increases—Application to certain retrospective rating agreements—1988 c 161: "The increases in benefits in RCW 51.32-.050, 51.32.060, 51.32.090, and 51.32.180, contained in chapter 161, Laws of 1988 do not affect a retrospective rating agreement entered into by any employer with the department before July 1, 1988." [1988 c 161 § 15.]

Effective dates—1988 c 161 §§ 1, 2, 3, 4, and 6: "Section 4 of this act shall take effect on June 30, 1989. Sections 1, 2, 3, and 6 of this act shall take effect on July 1, 1988." [1988 c 161 § 17.]

Effective date—1986 c 58 §§ 2, 3: See note following RCW 51.32.080.

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Legislative intent—1975 1st ex.s. c 179: "The legislative intent of chapter 179, Laws of 1975 1st ex. sess. (2nd SSB No. 2241) was in part to offer surviving spouses of eligible workmen two options upon remarriage; such options to be available to any otherwise eligible surviving spouse regardless of the date of death of the injured workman. Accordingly this 1976 amendatory act is required to clarify that intent." [1975-'76 2nd ex.s. c 45 § 1.]

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

51.32.240 Payments made due to error, mistake, erroneous adjudication, fraud, etc.—Penalty—Appeal—Enforcement of orders. (1) Whenever any payment of benefits under this title is made because of clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly acted upon, or any other circumstance of a similar nature, all not induced by fraud, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The department or self-insurer, as the case may be, must make claim for such repayment or recoupment within one year of the making of any such payment or it will be deemed any claim therefor has been waived. The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his discretion to waive, in whole or in part, the amount of any such timely claim where the recovery would be against equity and good conscience.

(2) Whenever the department issues an order rejecting a claim for benefits paid pursuant to RCW 51.32-.190 or 51.32.210, after payment for temporary disability benefits has been paid by a self-insurer pursuant to RCW 51.32.190(3) or by the department pursuant to RCW 51.32.210, the recipient thereof shall repay such benefits and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The director, under rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(3) Whenever any payment of benefits under this title has been made pursuant to an adjudication by the department or by order of the board or any court and timely appeal therefrom has been made where the final decision is that any such payment was made pursuant to

an erroneous adjudication, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(4) Whenever any payment of benefits under this title has been induced by fraud the recipient thereof shall repay any such payment together with a penalty of fifty percent of the total of any such payments and the amount of such total sum may be recouped from any future payments due to the recipient on any claim with the state fund or self-insurer against whom the fraud was committed, as the case may be, and the amount of such penalty shall be placed in the supplemental pension fund. Such repayment or recoupment must be demanded or ordered within one year of the discovery of the fraud.

(5) The worker, beneficiary, or other person affected thereby shall have the right to contest an order assessing an overpayment pursuant to this section in the same manner and to the same extent as provided under RCW 51.52.050 and 51.52.060. In the event such an order becomes final under chapter 51.52 RCW and notwithstanding the provisions of subsections (1) through (4) of this section, the director, director's designee, or self-insurer may file with the clerk in any county within the state a warrant in the amount of the sum representing the unpaid overpayment and/or penalty plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for such warrant and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the worker, beneficiary, or other person mentioned in the warrant, the amount of the unpaid overpayment and/or penalty plus interest accrued, and the date the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the worker, beneficiary, or other person against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department or self-insurer in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee of five dollars, which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the worker, beneficiary, or other person within three days of filing with the clerk.

The director, director's designee, or self-insurer may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice to withhold and deliver property of any kind if there is reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property that is due, owing, or belonging to any worker, beneficiary, or other person upon whom a warrant has been served for payments due the department or self-insurer. The notice and order to withhold and deliver shall be served by certified mail accompanied by an affidavit of service by mailing or served by the sheriff of the county, or by the sheriff's deputy, or by any authorized representative of the director, director's designee, or self-insurer. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired or in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with such notice and order, any property that may be subject to the claim of the department or self-insurer, such property shall be delivered forthwith to the director, the director's authorized representative, or self-insurer upon demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the full amount, plus costs, claimed by the director, director's designee, or self-insurer in the notice. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, the employer may assert in the answer all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled.

This subsection shall only apply to orders assessing an overpayment which are issued on or after July 28, 1991: PROVIDED, That this subsection shall apply retroactively to all orders assessing an overpayment resulting from fraud, civil or criminal.

(6) Orders assessing an overpayment which are issued on or after July 28, 1991, shall include a conspicuous notice of the collection methods available to the department or self-insurer. [1991 c 88 § 1; 1986 c 54 § 1; 1975 1st ex.s. c 224 § 13.]

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

51.32.300 State employee vocational rehabilitation coordinator. The director shall appoint a state employee vocational rehabilitation coordinator who shall provide technical assistance and coordination of claims management to state agencies and institutions of higher education under the state return-to-work programs created by RCW 41.06.490 and 28B.16.300. [1990 c 204 § 5.]

Findings—Purpose—1990 c 204: See note following RCW 51.44.170.

Chapter 51.36 MEDICAL AID

Sections

51.36.060 Duties of attending physician—Medical information.

51.36.060 Duties of attending physician—Medical information. Physicians examining or attending injured workers under this title shall comply with rules and regulations adopted by the director, and shall make such reports as may be requested by the department or self-insurer upon the condition or treatment of any such worker, or upon any other matters concerning such workers in their care. Except under RCW 49.17.210 and 49.17.250, all medical information in the possession or control of any person and relevant to the particular injury in the opinion of the department pertaining to any worker whose injury or occupational disease is the basis of a claim under this title shall be made available at any stage of the proceedings to the employer, the claimant's representative, and the department upon request, and no person shall incur any legal liability by reason of releasing such information. [1991 c 89 § 3; 1989 c 12 § 17; 1975 1st ex.s. c 224 § 15; 1971 ex.s. c 289 § 53.]

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

Chapter 51.44 FUNDS

Sections

51.44.100 Investment of accident, medical aid, reserve, supplemental pension funds.

51.44.170 Industrial insurance premium refund account.

51.44.100 Investment of accident, medical aid, reserve, supplemental pension funds. Whenever, in the judgment of the state investment board, there shall be in the accident fund, medical aid fund, reserve fund, or the supplemental pension fund, funds in excess of that amount deemed by the state investment board to be sufficient to meet the current expenditures properly payable therefrom, the state investment board may invest and reinvest such excess funds in the manner prescribed by RCW 43.84.150, and not otherwise.

The state investment board may give consideration to the investment of excess funds in federally insured student loans made to persons in vocational training or retraining or reeducation programs. The state investment board may make such investments by purchasing from savings and loan associations, commercial banks, mutual savings banks, credit unions and other institutions authorized to be lenders under the federally insured student loan act, organized under federal or state law and operating in this state loans made by such institutions to

residents of the state of Washington particularly for the purpose of vocational training or reeducation: PROVIDED, That the state investment board shall purchase only that portion of any loan which is guaranteed or insured by the United States of America, or by any agency or instrumentality of the United States of America: PROVIDED FURTHER, That the state investment board is authorized to enter into contracts with such savings and loan associations, commercial banks, mutual savings banks, credit unions, and other institutions authorized to be lenders under the federally insured student loan act to service loans purchased pursuant to this section at an agreed upon contract price. [1990 c 80 § 1; 1981 c 3 § 41; 1973 1st ex.s. c 103 § 6; 1972 ex.s. c 92 § 2; 1965 ex.s. c 41 § 1; 1961 c 281 § 10; 1961 c 23 § 51.44.100. Prior: 1959 c 244 § 1; 1935 c 90 § 1; RRS § 7705-1.]

Effective dates—Severability—1981 c 3: See notes following RCW 43.33A.010.

Severability—1973 1st ex.s. c 103: See note following RCW 2.10.080.

Legislative finding—Purpose—1972 ex.s. c 92: "The legislature finds that the accident fund, medical aid fund and reserve funds could be invested in such a manner as to promote vocational training and retraining or reeducation among the workers of this state. The legislature recognizes that federally insured student loans are already available to students at institutions of higher education. The legislature declares that the purpose of this 1972 amendatory act is to encourage the state finance committee to consider making some investment funds available for investment in federally insured student loans made to persons enrolled in vocational training and retraining or reeducation programs." [1972 ex.s. c 92 § 1.] This applies to the 1972 amendment to RCW 51.44.100.

Motor vehicle fund warrants for state highway acquisition: RCW 47.12.180 through 47.12.240.

Student loans: RCW 28B.10.280.

Uniform minor student capacity to borrow act: Chapter 26.30 RCW.

Vocational education: Chapter 28C.04 RCW.

Vocational rehabilitation: Chapter 74.29 RCW.

51.44.170 Industrial insurance premium refund account. The industrial insurance premium refund account is created in the state treasury. All industrial insurance refunds earned by state agencies or institutions of higher education under the state fund retrospective rating program shall be deposited into the account. Moneys in the account may be spent only after appropriation. No agency or institution of higher education may receive an appropriation for an amount greater than the refund earned by the agency. Expenditures from the account may be used for any program within an agency or institution of higher education, but preference shall be given to programs that promote or provide incentives for employee safety and early, appropriate return-to-work for injured employees. [1991 1st sp.s. c 13 § 29; 1990 c 204 § 2.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Findings—Purpose—1990 c 204: "The legislature finds that workplace safety in state employment is of paramount importance in maintaining a productive and committed state work force. The legislature also finds that recognition in state agencies and institutions of higher education of industrial insurance programs that provide safe working environments and promote early return-to-work for injured employees will encourage agencies and institutions of higher education

to develop these programs. A purpose of this act is to provide incentives for agencies and institutions of higher education to participate in industrial insurance safety programs and return-to-work programs by authorizing use of the industrial insurance premium refunds earned by agencies or institutions of higher education participating in industrial insurance retrospective rating programs." [1990 c 204 § 1.]

Effective date—1990 c 204 § 2: "Section 2 of this act shall take effect July 1, 1990." [1990 c 204 § 6.]

Chapter 51.52 APPEALS

Sections

51.52.120 Attorney's fee before department or board—Unlawful attorney's fees.

51.52.120 Attorney's fee before department or board—Unlawful attorney's fees. (1) It shall be unlawful for an attorney engaged in the representation of any worker or beneficiary to charge for services in the department any fee in excess of a reasonable fee, of not more than thirty percent of the increase in the award secured by the attorney's services. Such reasonable fee shall be fixed by the director or the director's designee for services performed by an attorney for such worker or beneficiary, if written application therefor is made by the attorney, worker, or beneficiary within one year from the date the final decision and order of the department is communicated to the party making the application.

(2) If, on appeal to the board, the order, decision, or award of the department is reversed or modified and additional relief is granted to a worker or beneficiary, or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained by the board, the board shall fix a reasonable fee for the services of his or her attorney in proceedings before the board if written application therefor is made by the attorney, worker, or beneficiary within one year from the date the final decision and order of the board is communicated to the party making the application. In fixing the amount of such attorney's fee, the board shall take into consideration the fee allowed, if any, by the director, for services before the department, and the board may review the fee fixed by said director. Any attorney's fee set by the department or the board may be reviewed by the superior court upon application of such attorney, worker, or beneficiary. The department or self-insured employer, as the case may be, shall be served a copy of the application and shall be entitled to appear and take part in the proceedings. Where the board, pursuant to this section, fixes the attorney's fee, it shall be unlawful for an attorney to charge or receive any fee for services before the board in excess of that fee fixed by the board. Any person who violates any provision of this section shall be guilty of a misdemeanor. [1990 c 15 § 1; 1982 c 63 § 22; 1977 ex.s. c 350 § 81; 1965 ex.s. c 63 § 1; 1961 c 23 § 51.52.120. Prior: 1951 c 225 § 16; prior: 1947 c 246 § 3; Rem. Supp. 1947 § 7679-3.]

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Title 52 FIRE PROTECTION DISTRICTS

Chapters

52.02 Formation.
52.06 Merger.
52.14 Commissioners.
52.18 Benefit charges.

Chapter 52.02 FORMATION

Sections

52.02.020 Districts authorized.
52.02.030 Petition—Certification.

52.02.020 Districts authorized. Fire protection districts for the provision of fire prevention services, fire suppression services, emergency medical services, and for the protection of life and property in areas outside of cities and towns, except where the cities and towns have been annexed into a fire protection district or where the district is continuing service pursuant to RCW 35.02.202, are authorized to be established as provided in this title. [1991 c 360 § 10; 1984 c 230 § 1; 1979 ex.s. c 179 § 5; 1959 c 237 § 1; 1947 c 254 § 1; 1945 c 162 § 1; 1943 c 121 § 1; 1941 c 70 § 1; 1939 c 34 § 1; Rem. Supp. 5654-101. Formerly RCW 52.04.020.]

Construction—Severability—1939 c 34: "The provisions of this act and proceedings thereunder shall be liberally construed with a view to effect their objects. If any section or provision of this act shall be adjudged to be 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 to be invalid or unconstitutional." [1939 c 34 § 51.]

Validating—Saving—1939 c 34: "Any petition heretofore drawn, signed and filed with the county auditor in compliance with the provisions of section 1 to section 6, inclusive, of the Laws of 1933, Extraordinary Session, shall be valid and the various steps required by this act for the creation of a fire-protection district may be continued, if the further steps to be taken are begun within ninety (90) days after the taking effect of this act [March 1, 1939], and it shall not be necessary to prepare, sign and file with the county auditor a new petition, and any district so created shall not be invalid by reason of the failure to draw, sign and file a new petition under the provisions of this act." [1939 c 34 § 49.]

52.02.030 Petition—Certification. (1) For the purpose of the formation of a fire protection district, a petition designating the boundaries of the proposed district, by metes and bounds, or by describing the lands to be included in the proposed district by United States townships, ranges and legal subdivisions, signed by not less than ten percent of the registered voters who reside within the boundaries of the proposed district who voted in the last general municipal election, and setting forth the object for the creation of the proposed district and alleging that the establishment of the proposed district will be conducive to the public safety, welfare, and convenience, and will be a benefit to the property included in the proposed district, shall be filed with the county auditor of the county in which all, or the largest portion

of, the proposed district is located, accompanied by an obligation signed by two or more petitioners, agreeing to pay the cost of the publication of the notice required by this title. The organization of any fire protection district previously formed is hereby approved and confirmed as a legally organized fire protection district in the state of Washington.

(2) The county auditor shall, within thirty days from the date of filing the petition, examine the signatures and certify to the sufficiency or insufficiency of the signatures. If the proposed fire protection district is located in more than one county, the auditor of the county in which the largest portion of the proposed fire protection district is located shall be the lead auditor and shall transmit a copy of the petition to the auditor or auditors of the other county or counties within which the proposed fire protection district is located. Each of these other auditors shall certify to the lead auditor both the total number of registered voters residing in that portion of the proposed fire protection district that is located in the county and the number of valid signatures of such voters who have signed the petition. The lead auditor shall certify to the sufficiency or insufficiency of the signatures. The books and records of the auditor shall be prima facie evidence of the truth of the certificate. No person having signed the petition is allowed to withdraw his or her name after the filing of the petition with the county auditor.

(3) If the petition is found to contain a sufficient number of signatures of registered voters residing within the proposed district, the county auditor shall transmit the petition, together with the auditor's certificate of sufficiency, to the county legislative authority or authorities of the county or counties in which the proposed fire protection district is located. [1990 c 259 § 12; 1989 c 63 § 1; 1984 c 230 § 2; 1963 ex.s. c 13 § 1; 1947 c 254 § 2; 1939 c 34 § 2; Rem. Supp. 1947 § 5654-102. Prior: 1933 c 60 § 2. Formerly RCW 52.04.030.]

Chapter 52.06

MERGER

Sections

52.06.020 Petition—Contents.

52.06.020 Petition—Contents. To effect such a merger, a petition to merge 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 on their own initiative, and they shall file a petition when it is signed by ten percent of the registered voters resident in the merging district who voted in the last general municipal election and presented to the board of commissioners. The petition shall state the reasons for the merger, state the terms and conditions under which the merger is proposed, and request the merger. [1990 c 259 § 13; 1984 c 230 § 58; 1947 c 254 § 13; Rem. Supp. 1947 § 5654-151b. Formerly RCW 52.24.020.]

Chapter 52.14 COMMISSIONERS

Sections

52.14.015 Increase from three to five commissioners—Election.

52.14.015 Increase from three to five commissioners—Election. In the event a three member board of commissioners of any fire protection district determines by resolution and approves by unanimous vote of the board that it would be in the best interest of the district to increase the number of commissioners from three to five, or in the event the board is presented with a petition signed by ten percent of the registered voters resident within the district who voted in the last general municipal election calling for such an increase in the number of commissioners of the district, the board shall submit a resolution to the county legislative authority or authorities of the county or counties in which the district is located requesting that an election be held. Upon receipt of the resolution, the legislative authority or authorities of the county or counties shall call a special election to be held within the fire protection district at which election the following proposition shall be submitted to the voters substantially as follows:

Shall the board of commissioners of _____ county fire protection district no. _____ be increased from three members to five members?

Yes _____

No _____

If the fire protection district is located in more than a single county, this proposition shall indicate the name of the district.

If the proposition receives a majority approval at the election, the board of commissioners of the fire protection district shall be increased to five members. The two additional members shall be appointed in the same manner as provided in RCW 52.14.020. [1990 c 259 § 14; 1989 c 63 § 20; 1984 c 230 § 85.]

Chapter 52.18

BENEFIT CHARGES

(Formerly: Service charges)

Sections

52.18.010 Benefit charges authorized—Exceptions—Amounts—Limitations.
52.18.020 Personal property, improvements to real property—Defined.
52.18.030 Resolution establishing benefit charges—Contents—Listing—Collection.
52.18.040 Reimbursement of county for administration and collection expenses.
52.18.050 Voter approval of benefit charges required—Election—Ballot.
52.18.060 Public hearing—Required—Report—Benefit charge resolution to be filed—Notification to property owners.
52.18.065 Property tax limited if benefit charge imposed.
52.18.070 Review board.
52.18.080 Model resolution.
52.18.090 Exemptions.
52.18.901 Severability—1990 c 294.

52.18.010 Benefit charges authorized—Exceptions—Amounts—Limitations. The board of fire commissioners of a fire protection district may by resolution, for fire protection district purposes authorized by law, fix and impose a benefit charge on personal property and improvements to real property which are located within the fire protection district on the date specified and which have or will receive the benefits provided by the fire protection district, to be paid by the owners of the properties: PROVIDED, That a benefit charge shall not apply to personal property and improvements to real property owned or used by any recognized religious denomination or religious organization as, or including, a sanctuary or for purposes related to the bona fide religious ministries of the denomination or religious organization, including schools and educational facilities used for kindergarten, primary, or secondary educational purposes or for institutions of higher education and all grounds and buildings related thereto, but not including personal property and improvements to real property owned or used by any recognized religious denomination or religious organization for business operations, profit-making enterprises, or activities not including use of a sanctuary or related to kindergarten, primary, or secondary educational purposes or for institutions of higher education. The aggregate amount of such benefit charges in any one year shall not exceed an amount equal to sixty percent of the operating budget for the year in which the benefit charge is to be collected: PROVIDED, That it shall be the duty of the county legislative authority or authorities of the county or counties in which the fire protection district is located to make any necessary adjustments to assure compliance with such limitation and to immediately notify the board of fire commissioners of any changes thereof.

A benefit charge imposed shall be reasonably proportioned to the measurable benefits to property resulting from the services afforded by the district. It is acceptable to apportion the benefit charge to the values of the properties as found by the county assessor or assessors modified generally in the proportion that fire insurance rates are reduced or entitled to be reduced as the result of providing the services. Any other method that reasonably apportions the benefit charges to the actual benefits resulting from the degree of protection, which may include but is not limited to the distance from regularly maintained fire protection equipment, the level of fire prevention services provided to the properties, or the need of the properties for specialized services, may be specified in the resolution and shall be subject to contest on the ground of unreasonable or capricious action or action in excess of the measurable benefits to the property resulting from services afforded by the district. The board of fire commissioners may determine that certain properties or types or classes of properties are not receiving measurable benefits based on criteria they establish by resolution. A benefit charge authorized by this chapter shall not be applicable to the personal property or improvements to real property of any individual,

corporation, partnership, firm, organization, or association maintaining a fire department and whose fire protection and training system has been accepted by a fire insurance underwriter maintaining a fire protection engineering and inspection service authorized by the state insurance commissioner to do business in this state, but such property may be protected by the fire protection district under a contractual agreement. [1990 c 294 § 1; 1989 c 63 § 28; 1987 c 325 § 1; 1985 c 7 § 122; 1974 ex.s. c 126 § 1.]

52.18.020 Personal property, improvements to real property—Defined. The term "personal property" for the purposes of this chapter shall include every form of tangible personal property, including but not limited to, all goods, chattels, stock in trade, estates, or crops: PROVIDED, That all personal property not assessed and subjected to ad valorem taxation under Title 84 RCW, all property under contract or for which the district is receiving payment for as authorized by RCW 52.30.020 and all property subject to the provisions of chapter 54.28 RCW, or all property that is subject to a contract for services with a fire protection district, shall be exempt from the benefit charge imposed under this chapter: PROVIDED FURTHER, That the term "personal property" shall not include any personal property used for farming, field crops, farm equipment or livestock: AND PROVIDED FURTHER, That the term "improvements to real property" shall not include permanent growing crops, field improvements installed for the purpose of aiding the growth of permanent crops, or other field improvements normally not subject to damage by fire. [1990 c 294 § 2; 1987 c 325 § 2; 1985 c 7 § 123; 1974 ex.s. c 126 § 2.]

52.18.030 Resolution establishing benefit charges—Contents—Listing—Collection. The resolution establishing benefit charges as specified in RCW 52.18.010 shall specify, by legal geographical areas or other specific designations, the charge to apply to each property by location, type, or other designation, or other information that is necessary to the proper computation of the benefit charge to be charged to each property owner subject to the resolution. The county assessor of each county in which the district is located shall determine and identify the personal properties and improvements to real property which are subject to a benefit charge in each fire protection district and shall furnish and deliver to the county treasurer of that county a listing of the properties with information describing the location, legal description, and address of the person to whom the statement of benefit charges is to be mailed, the name of the owner, and the value of the property and improvements, together with the benefit charge to apply to each. These benefit charges shall be certified to the county treasurer for collection in the same manner that is used for the collection of fire protection charges for forest lands protected by the department of natural resources under RCW 76.04.610 and

the same penalties and provisions for collection shall apply. [1990 c 294 § 3; 1989 c 63 § 29; 1987 c 325 § 3; 1986 c 100 § 53; 1974 ex.s. c 126 § 3.]

52.18.040 Reimbursement of county for administration and collection expenses. Each fire protection district shall contract, prior to the imposition of a benefit charge, for the administration and collection of the benefit charge by each county treasurer, who shall deduct a percent, as provided by contract to reimburse the county for expenses incurred by the county assessor and county treasurer in the administration of the resolution and this chapter. The county treasurer shall make distributions each year, as the charges are collected, in the amount of the benefit charges imposed on behalf of each district, less the deduction provided for in the contract. [1990 c 294 § 4; 1989 c 63 § 30; 1987 c 325 § 4; 1974 ex.s. c 126 § 4.]

52.18.050 Voter approval of benefit charges required—Election—Ballot. (1) Any benefit charge authorized by this chapter shall not be effective unless a proposition to impose the benefit charge is approved by a sixty percent majority of the voters of the district voting at a general election or at a special election called by the district for that purpose, held within the fire protection district. An election held pursuant to this section shall be held not more than twelve months prior to the date on which the first such charge is to be assessed: PROVIDED, That a benefit charge approved at an election shall not remain in effect for a period of more than six years nor more than the number of years authorized by the voters if fewer than six years unless subsequently re-approved by the voters.

(2) The ballot shall be submitted so as to enable the voters favoring the authorization of a fire protection district benefit charge to vote "Yes" and those opposed thereto to vote "No," and the ballot shall be:

"Shall ----- county fire protection district No. ----- be authorized to impose benefit charges each year for ----- (insert number of years not to exceed six) years, not to exceed an amount equal to sixty percent of its operating budget, and be prohibited from imposing an additional property tax under RCW 52.16.160?"

YES NO

[1990 c 294 § 5; 1989 c 27 § 1; 1987 c 325 § 5; 1974 ex.s. c 126 § 5.]

52.18.060 Public hearing—Required—Report—Benefit charge resolution to be filed—Notification to property owners. (1) Not less than ten days nor more than six months before the election at which the proposition to impose the benefit charge is submitted as provided in this chapter, the board of fire commissioners of the district shall hold a public hearing specifically setting forth its proposal to impose benefit charges for the support of its legally authorized activities which will maintain or improve the services afforded in the district.

A report of the public hearing shall be filed with the county treasurer of each county in which the property is located and be available for public inspection.

(2) Prior to November 15 of each year the board of fire commissioners shall hold a public hearing to review and establish the fire district benefit charges for the subsequent year.

All resolutions imposing or changing the benefit charges shall be filed with the county treasurer or treasurers of each county in which the property is located, together with the record of each public hearing, before November 30 immediately preceding the year in which the benefit charges are to be collected on behalf of the district.

After the benefit charges have been established, the owners of the property subject to the charge shall be notified of the amount of the charge. [1990 c 294 § 6; 1989 c 63 § 31; 1987 c 325 § 6; 1974 ex.s. c 126 § 6.]

52.18.065 Property tax limited if benefit charge imposed. A fire protection district that imposes a benefit charge under this chapter shall not impose all or part of the property tax authorized under RCW 52.16.160. [1990 c 294 § 7; 1987 c 325 § 9.]

52.18.070 Review board. After notice has been given to the property owners of the amount of the charge, the board of fire commissioners of a fire protection district imposing a benefit charge under this chapter shall form a review board for at least a two-week period and shall, upon complaint in writing of a party aggrieved owning property in the district, reduce the charge of a person who, in their opinion, has been charged too large a sum, to a sum or amount as they believe to be the true, fair, and just amount. [1990 c 294 § 8; 1987 c 325 § 7; 1974 ex.s. c 126 § 7.]

52.18.080 Model resolution. The Washington fire commissioners association, as soon as practicable, shall draft a model resolution to impose the fire protection district benefit charge authorized by this chapter and may provide assistance to fire protection districts in the establishment of a program to develop benefit charges. [1990 c 294 § 9; 1987 c 325 § 8; 1974 ex.s. c 126 § 8.]

52.18.090 Exemptions. A person who is receiving the exemption contained in RCW 84.36.381 through 84.36.389 shall be exempt from any legal obligation to pay a portion of the charge imposed by this chapter according to the following.

(1) A person who meets the income limitation contained in RCW 84.36.381(5)(a) and does not meet the income limitation contained in RCW 84.36.381(5)(b) (i) or (ii) shall be exempt from twenty-five percent of the charge.

(2) A person who meets the income limitation contained in RCW 84.36.381(5)(b)(i) shall be exempt from fifty percent of the charge.

(3) A person who meets the income limitation contained in RCW 84.36.381(5)(b)(ii) shall be exempt from seventy-five percent of the charge. [1990 c 294 § 10.]

52.18.901 Severability—1990 c 294. 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. [1990 c 294 § 11.]

Title 53 PORT DISTRICTS

Chapters

- 53.04 Formation.**
- 53.08 Powers.**
- 53.12 Commissioners—Elections.**
- 53.25 Industrial development districts—Marginal lands.**
- 53.31 Export trading companies.**
- 53.36 Finances.**
- 53.46 Consolidation.**
- 53.49 Disposition of funds on dissolution of certain districts.**

Chapter 53.04 FORMATION

Sections

- 53.04.020 Formation of district.
- 53.04.080 Annexation of territory—Petition—Election.
- 53.04.085 Petition for annexation to port district.
- 53.04.110 Change of name.

53.04.020 Formation of district. At any general election or at any special election which may be called for that purpose, the county legislative authority of any county in this state may, or on petition of ten percent of the registered voters of such county based on the total vote cast in the last general county election, shall, by resolution submit to the voters of such county the proposition of creating a port district which may: (1) Be coextensive with the limits of such county as now or hereafter established; or (2) be under the provisions of RCW 53.04.022. Such petition shall be filed with the county auditor, who shall within fifteen days examine the signatures thereof and certify to the sufficiency or insufficiency thereof, and for such purpose the county auditor shall have access to all registration books in the possession of the officers of any incorporated city or town in such proposed port district. If such petition be found to be insufficient, it shall be returned to the persons filing the same, who may amend or add names thereto for ten days, when the same shall be returned to the county auditor, who shall have an additional fifteen days to examine the same and attach his or her certificate thereto. No person having signed such petition shall be allowed to withdraw his or her name therefrom after the filing of the same with the county auditor. Whenever such petition shall be certified to as sufficient, the county auditor shall forthwith transmit the same, together with his or her certificate of sufficiency attached thereto, to the legislative authority of the county, who

shall submit such proposition at the next general election or, if such petition so requests, the county legislative authority shall, at their first meeting after the date of such certificate, by resolution, call a special election to be held in accordance with RCW 29.13.010 and 29.13.020. The notice of election shall state the boundaries of the proposed port district and the object of such election. In submitting the question to the voters for their approval or rejection, the proposition shall be expressed on the ballot substantially in the following terms:

"Port of -----, Yes." (giving the name of the principal seaport city within such proposed port district, or if there be more than one city of the same class within such district, such name as may be determined by the legislative authority of the county).

"Port of -----, No." (giving the name of the principal seaport city within such port district, or if there be more than one city of the same class within such district, such name as may be determined by the legislative authority of the county). [1990 c 259 § 15; 1986 c 262 § 1; 1971 ex.s. c 157 § 1; 1913 c 62 § 1; 1911 c 92 § 2; RRS § 9689. Formerly RCW 53.04.020 through 53.04.040.]

Effective date—1971 ex.s. c 157: "The effective date of this act shall be May 1, 1972." [1971 ex.s. c 157 § 4.]

53.04.080 Annexation of territory—Petition—Election. At any general election or at any special election which may be called for that purpose the county legislative authority of any county in this state in which there exists a port district which is not coextensive with the limits of the county, shall on petition of the commissioners of such port district, by resolution, submit to the voters residing within the limits of any territory which the existing port district desires to annex or include in its enlarged port district, the proposition of enlarging the limits of such existing port districts so as to include therein the whole of the territory embraced within the boundaries of such county, or such territory as may be described in the petition by legal subdivisions. Such petition shall be filed with the county auditor, who shall forthwith transmit the same to the county legislative authority, who shall submit such proposition at the next general election, or, if such petition so request, the county legislative authority, shall at their first meeting after the date of filing such petition, by resolution, call a special election to be held in accordance with RCW 29.13.010 and 29.13.020. The notice of election shall state the boundaries of the proposed enlarged port district and the object of the special election. In submitting the question to the voters of the territory proposed to be annexed or included for their approval or rejection, the proposition shall be expressed on the ballots substantially in the following terms:

"Enlargement of the port of -----, yes." (Giving then name of the port district which it is proposed to enlarge);

"Enlargement of the port of -----, no." (Giving the name of the port district which it is proposed to enlarge).

Such election, whether general or special, shall be held in each precinct wholly or partially embraced within the limits of the territory proposed to be annexed or included and shall be conducted and the votes cast thereat counted, canvassed, and the returns thereof made in the manner provided by law for holding general or special county elections. [1990 c 259 § 16; 1935 c 16 § 1; 1921 c 130 § 1; RRS § 9707. Formerly RCW 53.04.080 and 53.04.090.]

Elections: Title 29 RCW.

53.04.085 Petition for annexation to port district. If an area, not currently part of an existing port district desires to be annexed to a port district in the same county, upon receipt of a petition bearing the names of ten percent of the registered voters residing within the proposed boundaries of the area desiring to be annexed who voted in the last general municipal election, the commissioners of such port district shall petition the county legislative authority to annex such territory, as provided in RCW 53.04.080. [1990 c 259 § 17; 1971 ex.s. c 157 § 2.]

Effective date—1971 ex.s. c 157: See note following RCW 53.04.020.

53.04.110 Change of name. Any port district now existing or which may hereafter be organized under the laws of the state of Washington is hereby authorized to change its corporate name under the following conditions and in the following manner:

(1) On presentation, at least forty-five days before any general port election to be held in the port district, of a petition to the commissioners of any port district now existing or which may hereafter be established under the laws of the state of Washington, signed by not less than two hundred fifty registered voters residing within the port district and asking that the corporate name of the port district be changed, it shall be the duty of the commissioners to submit to the voters of the port district at the next general port election held in the port district in accordance with RCW 29.13.010 and 29.13.020 the proposition as to whether the corporate name of the port shall be changed.

(2) The petition shall contain the present corporate name of the port district and the corporate name which is proposed to be given to the port district.

(3) On submitting the proposition to the voters of the port district it shall be the duty of the port commissioners to cause to be printed on the official ballot used at the election the following proposition:

"Shall the corporate name, 'Port of _____' be changed to 'Port of _____' YES
"Shall the corporate name, 'Port of _____' be changed to 'Port of _____' NO"

(4) At the time when the returns of the general election shall be canvassed by the commissioners of the port

district, it shall be the duty of the commissioners to canvass the vote upon the proposition so submitted, recording in their record the result of the canvass.

(5) Should a majority of the registered voters of the port district voting at the general port election vote in favor of the proposition it shall be the duty of the port commissioners to certify the fact to the auditor of the county in which the port district shall be situated and to the secretary of state of the state of Washington, under the seal of the port district. On and after the filing of the certificate with the county auditor as aforesaid and with the secretary of state of the state of Washington, the corporate name of the port district shall be changed, and thenceforth the port district shall be known and designated in accordance therewith. [1990 c 259 § 18; 1929 c 140 § 1; RRS § 9689-1.]

**Chapter 53.08
POWERS**

Sections

- 53.08.170 Employment—Wages—Benefits—Agents—Insurance for port district commissioners. (Effective January 1, 1992.)
- 53.08.330 Streets, roads, and highways—Construction, upgrading, improvement, and repair authorized.
- 53.08.340 Streets, roads, and highways—Expenditure of funds.

53.08.170 Employment—Wages—Benefits—Agents—Insurance for port district commissioners. (Effective January 1, 1992.) The port commission shall have authority to create and fill positions, to fix wages, salaries and bonds thereof, to pay costs and assessments involved in securing or arranging to secure employees, and to establish such benefits for employees, including holiday pay, vacations or vacation pay, retirement and pension benefits, medical, surgical or hospital care, life, accident, or health disability insurance, and similar benefits, already established by other employers of similar employees, as the port commissioner shall by resolution provide: PROVIDED, That any district providing insurance benefits for its employees in any manner whatsoever may provide health and accident insurance, life insurance with coverage not to exceed that provided district employees, and business related travel, liability, and errors and omissions insurance, for its commissioners, which insurance shall not be considered to be compensation.

Subject to chapter 48.62 RCW, the port commission shall have authority to provide or pay such benefits directly, or to provide for such benefits by the purchase of insurance policies or entering into contracts with and compensating any person, firm, agency or organization furnishing such benefits, or by making contributions to vacation plans or funds, or health and welfare plans and funds, or pension plans or funds, or similar plans or funds, already established by other employers of similar employees and in which the port district is permitted to participate for particular classifications of its employees

by the trustees or other persons responsible for the administration of such established plans or funds: PROVIDED FURTHER, That no port district employee shall be allowed to apply for admission to or be accepted as a member of the state employees' retirement system after January 1, 1965, if admission to such system would result in coverage under both a private pension system and the state employees' retirement system, it being the purpose of this proviso that port districts shall not at the same time contribute for any employee to both a private pension or retirement plan and to the state employees' retirement system. The port commission shall have authority by resolution to utilize and compensate agents for the purpose of paying, in the name and by the check of such agent or agents or otherwise, wages, salaries and other benefits to employees, or particular classifications thereof, and for the purpose of withholding payroll taxes and paying over tax moneys so withheld to appropriate government agencies, on a combined basis with the wages, salaries, benefits, or taxes of other employers or otherwise; to enter into such contracts and arrangements with and to transfer by warrant such funds from time to time to any such agent or agents so appointed as are necessary to accomplish such salary, wage, benefit, or tax payments as though the port district were a private employer, notwithstanding any other provision of the law to the contrary. The funds of a port district transferred to such an agent or agents for the payment of wages or salaries of its employees in the name or by the check of such agent or agents shall be subject to garnishment with respect to salaries or wages so paid, notwithstanding any provision of the law relating to municipal corporations to the contrary. [1991 1st sp.s. c 30 § 22; 1987 c 50 § 1; 1985 c 81 § 1; 1973 1st ex.s. c 6 § 1; 1965 c 20 § 1; 1955 c 64 § 1.]

Effective date, implementation, application—Severability—1991 1st sp.s. c 30: See RCW 48.62.900 and 48.62.901.

Garnishment: Chapter 6.27 RCW.

Payroll deductions: RCW 41.04.020.

Prevailing wages on public works: Chapter 39.12 RCW.

53.08.330 Streets, roads, and highways—Construction, upgrading, improvement, and repair authorized. Any port district in this state, acting through its commission, may expend port funds toward construction, upgrading, improvement, or repair of any street, road, or highway that serves port facilities. [1990 c 5 § 1.]

53.08.340 Streets, roads, and highways—Expenditure of funds. The funds authorized by RCW 53.08.330 may be expended by the port commission in conjunction with any plan of improvements undertaken by the state of Washington, an adjoining state, or a county or municipal government of either, in combination with any of said public entities, and without regard to whether expenditures are made for a road located within the state of Washington or an adjoining state. [1990 c 5 § 2.]

Chapter 53.12 COMMISSIONERS—ELECTIONS

Sections	
53.12.010	Port commission—Number of commissioners.
53.12.020	Qualifications—Eligibility following void in candidacy.
53.12.035	Declarations of candidacy in districts in transition from three to five-member boards—Place, time, and manner of filing. (Effective until July 1, 1992.)
53.12.035	Declarations of candidacy in districts in transition from three to five-member boards—Place, time, and manner of filing. (Effective July 1, 1992.)
53.12.040	Repealed.
53.12.044	Repealed.
53.12.055	Repealed.
53.12.060	Elections.
53.12.150	Vacancies, how filled.
53.12.160	Repealed.
53.12.210	Repealed.

53.12.010 Port commission—Number of commissioners. The powers of the port district shall be exercised through a port commission consisting of three members. In any port district with boundaries that are coterminous with the boundaries of a county with a population of five hundred thousand or more the members shall be residents of the county in which the port district is located. In all other port districts, three commissioner districts, numbered consecutively, having approximately equal population and boundaries following ward and precinct lines, shall be described in the petition for the formation of the port district, and one commissioner shall be elected from each of said commissioner districts.

In port districts having additional commissioners as authorized by RCW 53.12.120 and 53.12.130, the powers of the port district shall be exercised through a port commission consisting of five members constituted as provided therein. [1991 c 363 § 128; 1965 c 51 § 1; 1959 c 17 § 3. Prior: 1913 c 62 § 2; 1911 c 92 § 3; RRS § 9690.]

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

53.12.020 Qualifications—Eligibility following void in candidacy. In a port district with boundaries that are coterminous with the boundaries of a county with a population of five hundred thousand or more no person shall be eligible to hold the office of port commissioner unless he or she is a qualified voter of the district. In all other port districts the person must be a qualified voter of the commissioner district from which he or she is elected.

If, pursuant to RCW 29.21.350, a void in candidacy has been declared for a port district, any registered voter of the port district is eligible to file a declaration of candidacy for the office of port commissioner when filing for the office is reopened pursuant to RCW 29.21-.360 or 29.21.370. [1991 c 363 § 129; 1986 c 262 § 2; 1965 c 51 § 2; 1959 c 175 § 1; 1959 c 17 § 4. Prior: 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part.]

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

53.12.035 Declarations of candidacy in districts in transition from three to five-member boards—Place, time, and manner of filing. (Effective until July 1, 1992.) In port districts that transition from a three-member board to a five-member board, the respective numbered port commissioner positions shall correspond to the numbers of the county legislative authority districts from which the three original commissioners in the port districts were elected, if the county had a three-member county legislative authority, and with positions four and five being assigned to the original at large commissioner positions for which the first incumbents received, respectively, the greater and lesser number of votes cast.

Each candidate for a port commissioner position, including the initial port commissioner positions, shall file a declaration of candidacy for a specific position, whether or not the position is associated with a commissioner district. [1991 c 363 § 130; 1965 c 51 § 3; 1959 c 175 § 9.]

Expiration dates—1991 c 363 §§ 46, 130: See note following RCW 36.16.030.

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

53.12.035 Declarations of candidacy in districts in transition from three to five-member boards—Place, time, and manner of filing. (Effective July 1, 1992.) In port districts that transition from a three-member board to a five-member board the respective numbered port commissioner positions shall correspond to the numbers of the county legislative authority districts from which the three original commissioners in the port districts were elected, if the county had a three-member county legislative authority, and with positions four and five being assigned to the original at large commissioner positions for which the first incumbents received, respectively, the greater and lesser number of votes cast.

Each candidate for a port commissioner position, including the initial port commissioner positions, shall file a declaration of candidacy for a specific position, whether or not the position is associated with a commissioner district. [1991 c 363 §§ 130, 131; 1990 c 59 § 108; 1965 c 51 § 3; 1959 c 175 § 9.]

Effective dates—1991 c 363 §§ 28, 29, 33, 47, 131: See note following RCW 28A.315.670.

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

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

53.12.040 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

53.12.044 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

53.12.055 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

53.12.060 Elections. A general election shall be held in conjunction with county elections for the election of a port commissioner or commissioners and for the submission of propositions, and special elections shall be held at such times and for such propositions as the port commission may by resolution prescribe, subject to the limitations and pursuant to the requirements of Title 29 RCW.

The manner of conducting and voting at elections under this act, opening and closing of polls, keeping of poll lists, canvassing the votes, declaring the result, and certifying the returns, shall be the same as provided by the general election laws governing the election of state and county officers. [1990 c 259 § 19; 1959 c 175 § 6; 1927 c 204 § 1; 1913 c 62 § 3; RRS § 9691. Formerly RCW 53.12.060, part, and 53.12.070 through 53.12.110. FORMER PART OF SECTION: 1913 c 62 § 2, part, now codified in RCW 53.12.010.]

Elections: Title 29 RCW.

53.12.150 Vacancies, how filled. A vacancy in the office of port commissioner created by death, resignation, or otherwise, shall be filled as follows:

(1) If there are simultaneously such number of vacancies that less than a majority of the full number of commissioners fixed by law remain in office, the legislative authority of the county shall within thirty days of such vacancies appoint the number of commissioners necessary to provide a majority. The commissioners thus appointed, together with any remaining commissioners, shall then, within sixty days of their appointment, meet and appoint the number of commissioners needed to complete the board of commissioners. However, if they fail to fill the remaining vacancies within this sixty-day period, the legislative authority of the county shall make the necessary appointments.

(2) If a majority of the full number of commissioners fixed by law remains on the board, the remaining commissioners shall fill any vacancies. However, if they fail to fill any vacancy within sixty days of its occurrence, the legislative authority of the county shall make the necessary appointment.

(3) A person appointed to fill a vacancy in the office of port commissioner shall serve until a successor is elected and qualified under chapter 29.21 RCW. The person who is elected shall take office immediately after he or she is qualified and shall serve the remainder of the unexpired term. [1990 c 40 § 1; 1985 c 87 § 1; 1983 c 11 § 1; 1959 c 175 § 8; 1959 c 17 § 8. Prior: 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part.]

53.12.160 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

53.12.210 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 53.25

INDUSTRIAL DEVELOPMENT DISTRICTS—
MARGINAL LANDS

Sections

53.25.100 Powers as to industrial development districts.

53.25.100 Powers as to industrial development districts. All port districts wherein industrial development districts have been established are authorized and empowered to acquire by purchase or condemnation or both, all lands, property and property rights necessary for the purpose of the development and improvement of such industrial development district and to exercise the right of eminent domain in the acquirement or damaging of all lands, property and property rights and the levying and collecting of assessments upon property for the payment of all damages and compensation in carrying out the provisions for which said industrial development district has been created; to develop and improve the lands within such industrial development district to make the same suitable and available for industrial uses and purposes; to dredge, bulkhead, fill, grade, and protect such property; to provide, maintain, and operate water, light, power and fire protection facilities and services, streets, roads, bridges, highways, waterways, tracks, and rail and water transfer and terminal facilities and other harbor and industrial improvements; to execute leases of such lands or property or any part thereof; to establish local improvement districts within such industrial development districts which may, but need not, be coextensive with the boundaries thereof, and to levy special assessments, under the mode of annual installments, over a period not exceeding ten years, on all property specially benefited by any local improvement, on the basis of special benefits, to pay in whole or in part the damages or costs of any improvement ordered in such local improvement district; to issue local improvement bonds in any such local improvement district; to be repaid by the collection of local improvement assessments; and generally to exercise with respect to and within such industrial development districts all the powers now or hereafter conferred by law upon port districts in counties with a population of one hundred twenty-five thousand or more: PROVIDED, That the exercise of powers hereby authorized and granted shall be in the manner now and hereafter provided by the laws of the state for the exercise of such powers by port districts under the general laws relating thereto insofar as the same shall not be inconsistent with this chapter. [1991 c 363 § 132; 1955 c 73 § 10. Prior: 1939 c 45 § 6; RRS § 9709-6; RCW 53.24.070.]

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

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9); Title 8 RCW.

Chapter 53.31

EXPORT TRADING COMPANIES

Sections

53.31.010 Repealed. (Effective June 30, 1995.)
 53.31.020 Definitions. (Effective until June 30, 1995.)
 53.31.020 Repealed. (Effective June 30, 1995.)
 53.31.030 Repealed. (Effective June 30, 1995.)
 53.31.040 Repealed. (Effective June 30, 1995.)
 53.31.050 Repealed. (Effective June 30, 1995.)
 53.31.060 Repealed. (Effective June 30, 1995.)
 53.31.900 Repealed.
 53.31.910 Export trading companies, authorization—
 Termination.
 53.31.911 Export trading companies, authorization—Repeal.

53.31.010 Repealed. (Effective June 30, 1995.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

53.31.020 Definitions. (Effective until June 30, 1995.) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Port district" means any port district other than a county-wide port district in a county with a population of two hundred ten thousand or more, established under Title 53 RCW.

(2) "Export services" means the following services when provided in order to facilitate the export of goods or services through Washington ports: International market research, promotion, consulting, marketing, legal assistance, trade documentation, communication and processing of foreign orders to and for exporters and foreign purchasers, financing, and contracting or arranging for transportation, insurance, warehousing, foreign exchange, and freight forwarding.

(3) "Export trading company" means an entity created by a port district under RCW 53.31.040.

(4) "Obligations" means bonds, notes, securities, or other obligations or evidences of indebtedness.

(5) "Person" means any natural person, firm, partnership, association, private or public corporation, or governmental entity. [1991 c 363 § 133; 1986 c 276 § 2.]

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

53.31.020 Repealed. (Effective June 30, 1995.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

53.31.030 Repealed. (Effective June 30, 1995.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

53.31.040 Repealed. (Effective June 30, 1995.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

53.31.050 Repealed. (Effective June 30, 1995.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

53.31.060 Repealed. (Effective June 30, 1995.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

53.31.900 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

53.31.910 Export trading companies, authorization—Termination. The authorization of export trading companies under this chapter shall be terminated on June 30, 1994, as provided in RCW 53.31.911. [1990 c 297 § 22.]

53.31.911 Export trading companies, authorization—Repeal. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 1995:

- (1) RCW 53.31.010 and 1986 c 276 s 1;
- (2) RCW 53.31.020 and 1991 c 363 s 133 & 1986 c 276 s 2;
- (3) RCW 53.31.030 and 1986 c 276 s 3;
- (4) RCW 53.31.040 and 1989 c 11 s 23 & 1986 c 276 s 4;
- (5) RCW 53.31.050 and 1986 c 276 s 5; and
- (6) RCW 53.31.060 and 1986 c 276 s 6. [1991 c 363 § 162; 1990 c 297 § 23.]

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

Chapter 53.36 FINANCES

Sections

53.36.030 Indebtedness—Limitation.

53.36.030 Indebtedness—Limitation. (1)(a) Except as provided in (b) of this subsection, a port district may at any time contract indebtedness or borrow money for district purposes and may issue general obligation bonds therefor not exceeding an amount, together with any existing indebtedness of the district not authorized by the voters, of one-fourth of one percent of the value of the taxable property in the district.

(b) Port districts having less than eight hundred million dollars in value of taxable property may at any time contract indebtedness or borrow money for port district purposes and may issue general obligation bonds therefor not exceeding an amount, combined with existing indebtedness of the district not authorized by the voters, of three-eighths of one percent of the value of the taxable property in the district. Prior to contracting for any indebtedness authorized by this subsection (1)(b), the port district must have a comprehensive plan for harbor improvements or industrial development and a long-term financial plan approved by the department of community development. The department of community development is immune from any liability for its part in reviewing or approving port district's improvement or development plans, or financial plans. Any indebtedness

authorized by this subsection (1)(b) may be used only to acquire or construct a facility, and, prior to contracting for such indebtedness, the port district must have a lease contract for a minimum of five years for the facility to be acquired or constructed by the debt.

(2) With the assent of three-fifths of the voters voting thereon at a general or special port election called for that purpose, a port district may contract indebtedness or borrow money for district purposes and may issue general obligation bonds therefor provided the total indebtedness of the district at any such time shall not exceed three-fourths of one percent of the value of the taxable property in the district.

(3) In addition to the indebtedness authorized under subsections (1) and (2) of this section, port districts having less than two hundred million dollars in value of taxable property and operating a municipal airport may at any time contract indebtedness or borrow money for airport capital improvement purposes and may issue general obligation bonds therefor not exceeding an additional one-eighth of one percent of the value of the taxable property in the district without authorization by the voters; and, with the assent of three-fifths of the voters voting thereon at a general or special port election called for that purpose, may contract indebtedness or borrow money for airport capital improvement purposes and may issue general obligation bonds therefor for an additional three-eighths of one percent provided the total indebtedness of the district for all port purposes at any such time shall not exceed one and one-fourth percent of the value of the taxable property in the district.

(4) Any port district may issue general district bonds evidencing any indebtedness, payable at any time not exceeding fifty years from the date of the bonds. Any contract for indebtedness or borrowed money authorized by RCW 53.36.030(1)(b) shall not exceed twenty-five years. The bonds shall be issued and sold in accordance with chapter 39.46 RCW.

(5) Elections required under this section shall be held as provided in RCW 39.36.050.

(6) For the purpose of this section, "indebtedness of the district" shall not include any debt of a county-wide district with a population less than twenty-five hundred people when the debt is secured by a mortgage on property leased to the federal government; and the term "value of the taxable property" shall have the meaning set forth in RCW 39.36.015. [1991 c 314 § 29; 1990 c 254 § 1; 1984 c 186 § 41; 1970 ex.s. c 42 § 32; 1965 ex.s. c 54 § 1; 1959 c 52 § 1; 1955 c 65 § 12. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Findings—1991 c 314: See note following RCW 43.31.601.

Purpose—1984 c 186: See note following RCW 39.46.110.

Severability—Effective date—1970 ex.s. c 42: See notes following RCW 39.36.015.

Elections to authorize port district bonds: Chapter 39.40 RCW.

General provisions applicable to district bonds: Chapter 39.44 RCW.

Limitation upon indebtedness: State Constitution Art. 8 § 6 (Amendment 27); Chapter 39.36 RCW.

Port district indebtedness authorized, emergency public works: RCW 39.28.030.

Chapter 53.46 CONSOLIDATION

Sections

53.46.020 Special election—Conduct.

53.46.020 Special election—Conduct. The special election to consider such consolidation and to fill such offices shall be conducted in accordance with the general election laws of the state. [1990 c 259 § 20; 1965 c 102 § 3; 1961 c 26 § 2.]

Chapter 53.49 DISPOSITION OF FUNDS ON DISSOLUTION OF CERTAIN DISTRICTS

Sections

53.49.010 Port districts in counties with populations of from eight thousand to less than twelve thousand—Disposition of funds.

53.49.010 Port districts in counties with populations of from eight thousand to less than twelve thousand—Disposition of funds. Whenever any port district located in any county with a population of from eight thousand to less than twelve thousand shall be dissolved and disestablished or is about to be dissolved and disestablished and any sums of money remain in any of its funds, the port commissioners are authorized and directed to apply by petition, which may be filed without fee, to the superior court of such county for an order authorizing the transfer of such funds to the school district fund or if there be more than one such district, the school district funds of all districts, which are located within the boundaries of such port district. [1991 c 363 § 134; 1943 c 282 § 1; Rem. Supp. 1943 § 9718-10. Formerly RCW 53.48.100.]

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

Title 54 PUBLIC UTILITY DISTRICTS

Chapters

54.04 General provisions.
54.12 Commissioners.
54.16 Powers.
54.24 Finances.

Chapter 54.04 GENERAL PROVISIONS

Sections

54.04.050 Group employee insurance—Annuities—Retirement income policies. (Effective January 1, 1992.)
54.04.070 Contracts for work or materials—Notice—Emergency purchases.

54.04.050 Group employee insurance—Annuities—Retirement income policies. (Effective January 1, 1992.) (1) Subject to chapter 48.62 RCW, any public utility district engaged in the operation of electric or water utilities may enter into contracts of group insurance for the benefit of its employees, and pay all or any part of the premiums for such insurance. Such premiums shall be paid out of the revenues derived from the operation of such properties: PROVIDED, That if the premium is to be paid by the district and employees jointly, and the benefits of the policy are offered to all eligible employees, not less than seventy-five percent of such employees may be so insured.

(2) A public utility district whose employees or officials are not members of the state retirement system engaged in the operation of electric or water utilities may contract for individual annuity contracts, retirement income policies or group annuity contracts, including prior service, to provide a retirement plan, or any one or more of them, and pay all or any part of the premiums therefor out of the revenue derived from the operation of its properties. [1991 1st sp.s. c 30 § 23; 1984 c 15 § 1; 1959 c 233 § 1; 1941 c 245 § 8; Rem. Supp. 1941 § 11616-6.]

Effective date, implementation, application—Severability—1991 1st sp.s. c 30: See RCW 48.62.900 and 48.62.901.

Severability—1941 c 245: "If any section or provision of this act shall be adjudged to be invalid, such adjudication shall not affect the validity of the act as a whole or any section, provision or part thereof not adjudged to be invalid." [1941 c 245 § 11.]

Group insurance: Chapters 48.21 and 48.24 RCW.

54.04.070 Contracts for work or materials—Notice—Emergency purchases. Any item, or items of the same kind of materials, equipment, or supplies purchased, the estimated cost of which is in excess of five thousand dollars, exclusive of sales tax shall be by contract: PROVIDED, That a district may make purchases of the same kind of items of materials, equipment and supplies not exceeding five thousand dollars in any calendar month without a contract, purchasing any excess thereof over five thousand dollars by contract. Any work ordered by a district commission, the estimated cost of which is in excess of ten thousand dollars exclusive of sales tax, shall be by contract, except that a district commission may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract. Prudent utility management means performing work with regularly employed personnel utilizing material of a worth not exceeding fifty thousand dollars in value without a contract: PROVIDED, That such limit on the value of material being utilized in work being performed by regularly employed personnel shall not include the value of individual items of equipment purchased or acquired and used as one unit of a project. Before awarding such a contract, the commission shall publish a notice once or more in a newspaper of general circulation in the district at least twenty days before the letting of the contract, inviting sealed proposals for the work or materials; plans and specifications of which

shall at the time of the publication be on file at the office of the district subject to public inspection: PROVIDED, That any published notice ordering work to be performed for the district shall be mailed at the time of publication to any established trade association which files a written request with the district to receive such notices. The commission may at the same time and as part of the same notice, invite tenders for the work or materials upon plans and specifications to be submitted by the bidders.

Notwithstanding any other provisions herein, all contract projects, the estimated cost of which is less than one hundred thousand dollars, may be awarded to a contractor on the small works roster. The small works roster shall be comprised of all responsible contractors who have requested to be on the list. The commission shall authorize by resolution a procedure for securing telephone and/or written quotations from the contractors on the small works roster to assure establishment of a competitive price and for awarding contracts to the lowest responsible bidder. Such procedure shall require that a good-faith effort be made to request quotations from all contractors on the small works roster. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry. The small works roster shall be revised once a year. All contract projects equal to or in excess of one hundred thousand dollars shall be let by competitive bidding.

Whenever equipment or materials required by a district are held by a governmental agency and are available for sale but such agency is unwilling to submit a proposal, the commission may ascertain the price of such items and file a statement of such price supported by the sworn affidavit of one member of the commission and may consider such price as a bid without a deposit or bond. In the event of an emergency when the public interest or property of the district would suffer material injury or damage by delay, upon resolution of the commission, or proclamation of an official designated by the board to act for the board during such emergencies, declaring the existence of such emergency and reciting the facts constituting the same, the board, or the official acting for the board, may waive the requirements of this chapter with reference to any purchase or contract, after having taken precautions to secure the lowest price practicable under the circumstances.

After determination by the commission during a public meeting that a particular purchase is available clearly and legitimately only from a single source of supply, the bidding requirements of this section may be waived by the commission. [1990 c 251 § 1; 1971 ex.s. c 220 § 4; 1955 c 124 § 2. Prior: 1951 c 207 § 2; 1931 c 1 § 8, part; RRS § 11612, part.]

Contracts with state department of transportation: RCW 47.01.210.

Emergency public works: Chapter 39.28 RCW.

Prevailing wages on public works: Chapter 39.12 RCW.

Public purchase preferences: Chapter 39.24 RCW.

Chapter 54.12 COMMISSIONERS

Sections

54.12.010 When district formed—Commissioners—Election—Terms—District boundaries change, etc. (Effective July 1, 1992.)

54.12.010 When district formed—Commissioners—Election—Terms—District boundaries change, etc. (Effective July 1, 1992.) Within ten days after such election, the county canvassing board shall canvass the returns, and if at such election a majority of the voters voting upon such proposition shall vote in favor of the formation of such district, the canvassing board shall so declare in its canvass of the returns of such election, and such public utility district shall then be and become a municipal corporation of the state of Washington, and the name of such public utility district shall be Public Utility District No. _____ of _____ County. The powers of the public utility district shall be exercised through a commission consisting of three members in three commissioner districts, and five members in five commissioner districts. When the public utility district is coextensive with the limits of such county, then, at the first election of commissioners and until any change shall have been made in the boundaries of public utility district commissioner districts, one public utility district commissioner shall be chosen from each of the three county commissioner districts of the county in which the public utility district is located if the county is not operating under a "Home Rule" charter. When the public utility district comprises only a portion of the county, with boundaries established in accordance with chapter 54.08 RCW, or when the public utility district is located in a county operating under a "Home Rule" charter, three public utility district commissioner districts, numbered consecutively, having approximately equal population and boundaries, following ward and precinct lines, as far as practicable, shall be described in the petition for the formation of the public utility district, which shall be subject to appropriate change by the county legislative authority if and when they change the boundaries of the proposed public utility district, and one commissioner shall be elected from each of said public utility district commissioner districts. In all five commissioner districts an additional commissioner at large shall be chosen from each of the two at large districts. No person shall be eligible to be elected to the office of public utility district commissioner for a particular district commissioner district unless he is a registered voter of the public utility district commissioner district or at large district from which he is elected.

Except as otherwise provided, the term of office of each public utility district commissioner other than the commissioners at large shall be six years, and the term of each commissioner at large shall be four years. Each term shall be computed in accordance with RCW 29.04.170 following the commissioner's election. One commissioner at large and one commissioner from a

commissioner district shall be elected at each general election held in an even-numbered year for the term of four years and six years respectively. All candidates shall be voted upon by the entire public utility district.

When a public utility district is formed, three public utility district commissioners shall be elected at the same election at which the proposition is submitted to the voters as to whether such public utility district shall be formed. If the general election adopting the proposition to create the public utility district was held in an even-numbered year, the commissioner residing in commissioner district number one shall hold office for the term of six years; the commissioner residing in commissioner district number two shall hold office for the term of four years; and the commissioner residing in commissioner district number three shall hold office for the term of two years. If the general election adopting the proposition to create the public utility district was held in an odd-numbered year, the commissioner residing in commissioner district number one shall hold office for the term of five years, the commissioner in district two shall hold office for the term of three years, and the commissioner in district three shall hold office for the term of one year. The commissioners first to be elected as above provided shall hold office from the first day of the month following the commissioners' election and their respective terms of office shall be computed from the first day of January next following the election.

All public utility district commissioners shall hold office until their successors shall have been elected and have qualified and assume office in accordance with RCW 29.04.170. A filing for nomination for public utility district commissioner shall be accompanied by a petition signed by one hundred registered voters of the public utility district which shall be certified by the county auditor to contain the required number of registered voters, and shall otherwise be filed in accord with the requirements of Title 29 RCW. At the time of filing such nominating petition, the person so nominated shall execute and file a declaration of candidacy subject to the provisions of Title 29 RCW, as now or hereafter amended. The petition and each page of the petition shall state whether the nomination is for a commissioner from a particular commissioner district or for a commissioner at large and shall state the districts; otherwise it shall be void. A vacancy in the office of public utility district commissioner shall occur by death, resignation, removal, conviction of a felony, nonattendance at meetings of the public utility district commission for a period of sixty days unless excused by the public utility district commission, by any statutory disqualification, or by any permanent disability preventing the proper discharge of his duty. In the event of a vacancy in said office, such vacancy shall be filled at the next general election held in an even-numbered year, the vacancy in the interim to be filled by appointment by the remaining commissioners. If more than one vacancy exists at the same time in a three commissioner district, or more than two in a five commissioner district, a special election shall be called by the county canvassing board upon the request of the remainder, or, that failing, by the county election board,

such election to be held not more than forty days after the occurring of such vacancies.

A majority of the persons holding the office of public utility district commissioner at any time shall constitute a quorum of the commission for the transaction of business, and the concurrence of a majority of the persons holding such office at the time shall be necessary and shall be sufficient for the passage of any resolution, but no business shall be transacted, except in usual and ordinary course, unless there are in office at least a majority of the full number of commissioners fixed by law.

The boundaries of the public utility district commissioners' district may be changed only by the public utility district commission, and shall be examined every ten years to determine substantial equality of population, but said boundaries shall not be changed oftener than once in four years, and only when all members of the commission are present. Whenever territory is added to a public utility district under RCW 54.04.035, the boundaries of the public utility commissioners' districts shall be changed to include such additional territory. The proposed change of the boundaries of the public utility district commissioners' district must be made by resolution and after public hearing. Notice of the time of a public hearing thereon shall be published for two weeks prior thereto. Upon a referendum petition signed by ten percent of the qualified voters of the public utility district being filed with the county auditor, the county legislative authority shall submit such proposed change of boundaries to the voters of the public utility district for their approval or rejection. Such petition must be filed within ninety days after the adoption of resolution of the proposed action. The validity of said petition shall be governed by the provisions of chapter 54.08 RCW. [1990 c 59 § 109; 1987 c 292 § 1; 1979 ex.s. c 126 § 37; 1977 ex.s. c 36 § 8; 1977 c 53 § 2; 1969 c 106 § 1; 1959 c 265 § 9; 1941 c 245 § 4; 1931 c 1 § 4; Rem. Supp. 1941 § 11608. Formerly RCW 54.08.030, 54.08.040, 54.12.010 through 54.12.070.]

Intent—**Effective date**—1990 c 59: See notes following RCW 29.01.006.

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

Construction—**Severability**—1969 c 106: See notes following RCW 54.08.041.

Chapter 54.16 POWERS

Sections	
54.16.070	District may borrow money, contract indebtedness, issue bonds or obligations—Guaranty fund.
54.16.100	Manager—Appointment—Compensation—Duties.
54.16.180	Sale, lease, disposition of properties—Procedure—Acquisition, operation of sewage system by districts in certain counties.
54.16.285	Limitations on termination of utility service for residential heating.
54.16.286	Expired.
54.16.310	Operation, maintenance, and inspection of sewage disposal facilities, septic tanks, and wastewater disposal facilities and systems—Maintenance costs.

54.16.070 District may borrow money, contract indebtedness, issue bonds or obligations—Guaranty fund.

(1) A district may contract indebtedness or borrow money for any corporate purpose on its credit or on the revenues of its public utilities, and to evidence such indebtedness may issue general obligation bonds or revenue obligations; may issue and sell local utility district bonds of districts created by the commission, and may purchase with surplus funds such local utility district bonds, and may create a guaranty fund to insure prompt payment of all local utility district bonds. The general obligation bonds shall be issued and sold in accordance with chapter 39.46 RCW. A district is authorized to establish lines of credit or make other prearranged agreements, or both, to borrow money with any financial institution.

(2) Notwithstanding subsection (1) of this section, such revenue obligations and local utility district bonds may be issued and sold in accordance with chapter 39.46 RCW. [1991 c 74 § 1; 1984 c 186 § 44; 1983 c 167 § 144; 1959 c 218 § 1; 1955 c 390 § 8. Prior: 1945 c 143 § 1(f); 1931 c 1 § 6(f); Rem. Supp. 1945 § 11610(f).]

Purpose—1984 c 186: See note following RCW 39.46.110.

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

54.16.100 Manager—Appointment—Compensation—Duties. The commission, by resolution introduced at a regular meeting and adopted at a subsequent regular meeting, shall appoint and may remove at will a district manager, and shall, by resolution, fix his or her compensation.

The manager shall be the chief administrative officer of the district, in control of all administrative functions and shall be responsible to the commission for the efficient administration of the affairs of the district placed in his or her charge. The manager shall be an experienced executive with administrative ability. In the absence or temporary disability of the manager, the manager shall, with the approval of the president of the commission, designate some competent person as acting manager.

The manager may attend all meetings of the commission and its committees, and take part in the discussion of any matters pertaining to the duties of his or her department, but shall have no vote.

The manager shall carry out the orders of the commission, and see that the laws pertaining to matters within the functions of his or her department are enforced; keep the commission fully advised as to the financial condition and needs of the districts; prepare an annual estimate for the ensuing fiscal year of the probable expenses of the department, and 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 the development work, extensions, and additions; certify to the commission all bills, allowances, and payrolls, including claims due contractors of public works; recommend to the commission compensation of

the employees of his or her office, and a scale of compensation to be paid for the different classes of service required by the district; hire and discharge employees under his or her direction; and perform such other duties as may be imposed upon the manager by resolution of the commission. It is unlawful for the manager to make any contribution of money in aid of or in opposition to the election of any candidate for public utility commissioner or to advocate or oppose any such election. [1990 c 16 § 1; 1955 c 390 § 11. Prior: 1945 c 143 § 1(j), part; 1931 c 1 § 6(j), part; Rem. Supp. 1945 § 11610(j), part.]

54.16.180 Sale, lease, disposition of properties—Procedure—Acquisition, operation of sewage system by districts in certain counties.

A district may sell and convey, lease, or otherwise dispose of all or any part of its works, plants, systems, utilities and properties, after proceedings and approval by the voters of the district, as provided for the lease or disposition of like properties and facilities owned by cities and towns: **PROVIDED**, That the affirmative vote of three-fifths of the voters voting at an election on the question of approval of a proposed sale, shall be necessary to authorize such sale: **PROVIDED FURTHER**, That a district may sell, convey, lease or otherwise dispose of all or any part of the property owned by it, located outside its boundaries, to another public utility district, city, town or other municipal corporation without the approval of the voters; or may sell, convey, lease, or otherwise dispose of to any person or public body, any part, either within or without its boundaries, which has become unserviceable, inadequate, obsolete, worn out or unfit to be used in the operations of the system and which is no longer necessary, material to, and useful in such operations, without the approval of the voters: **PROVIDED FURTHER**, That a public utility district located within a county with a population of from one hundred twenty-five thousand to less than [than] two hundred ten thousand may sell and convey to a city of the first class, which owns its own water system, all or any part of a water system owned by said public utility district where a portion of it is located within the boundaries of such city, without approval of the voters upon such terms and conditions as the district shall determine: **PROVIDED FURTHER**, That a public utility district located in a county with a population of from twelve thousand to less than eighteen thousand and bordered by the Columbia river may, separately or in connection with the operation of a water system, or as part of a plan for acquiring or constructing and operating a water system, or in connection with the creation of another or subsidiary local utility district, may provide for the acquisition or construction, additions or improvements to, or extensions of, and operation of a sewage system within the same service area as in the judgment of the district commission is necessary or advisable in order to eliminate or avoid any existing or potential danger to the public health by reason of the lack of sewerage facilities or by reason of the inadequacy of existing facilities: **AND PROVIDED FURTHER**, That a public utility district located within a county with

a population of from one hundred twenty-five thousand to less than two hundred ten thousand bordering on Puget Sound may sell and convey to any city of the third class or town all or any part of a water system owned by said public utility district without approval of the voters upon such terms and conditions as the district shall determine. Public utility districts are municipal corporations for the purposes of this section and the commission shall be held to be the legislative body and the president and secretary shall have the same powers and perform the same duties as the mayor and city clerk and the resolutions of the districts shall be held to be ordinances within the meaning of the statutes governing the sale, lease, or other disposal of public utilities owned by cities and towns. [1991 c 363 § 135; 1977 ex.s. c 31 § 1; 1963 c 196 § 1; 1959 c 275 § 1; 1955 c 390 § 19. Prior: 1945 c 143 § 1(m); 1931 c 1 § 6(m); Rem. Supp. 1945 § 11610(m).]

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

54.16.285 Limitations on termination of utility service for residential heating. (1) A district providing utility service for residential space heating shall not terminate such utility service between November 15 through March 15 if the customer:

(a) Notifies the utility of the inability to pay the bill, including a security deposit. This notice should be provided within five business days of receiving a payment overdue notice unless there are extenuating circumstances. If the customer fails to notify the utility within five business days and service is terminated, the customer can, by paying reconnection charges, if any, and fulfilling the requirements of this section, receive the protections of this chapter;

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

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

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

(e) Agrees to a payment plan and agrees to maintain the payment plan. The plan will be designed both to pay the past due bill by the following October 15 and to pay for continued utility service. If the past due bill is not paid by the following October 15, the customer shall not be eligible for protections under this chapter until the past due bill is paid. The plan shall not require monthly payments in excess of seven percent of the customer's

monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter during November 15 through March 15. A customer may agree to pay a higher percentage during this period, but shall not be in default unless payment during this period is less than seven percent of monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter. If assistance payments are received by the customer subsequent to implementation of the plan, the customer shall contact the utility to reformulate the plan; and

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

(2) The utility shall:

(a) Include in any notice that an account is delinquent and that service may be subject to termination, a description of the customer's duties in this section;

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

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

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

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

(3) All districts providing utility service for residential space heating shall offer residential customers the option of a budget billing or equal payment plan. The budget billing or equal payment plan shall be offered low-income customers eligible under the state's plan for low-income energy assistance prepared in accordance with 42 U.S.C. 8624(C)(1) without limiting availability to certain months of the year, without regard to the length of time the customer has occupied the premises, and without regard to whether the customer is the tenant or owner of the premises occupied.

(4) An agreement between the customer and the utility, whether oral or written, shall not waive the protections afforded under this chapter. [1991 c 165 § 3; 1990 1st ex.s. c 1 § 3; 1986 c 245 § 3; 1985 c 6 § 19; 1984 c 251 § 2.]

Findings—1991 c 165: See note following RCW 35.21.300.

54.16.286 Expired. See Table of Disposition of former RCW Sections, Supplement Volume 9A.

54.16.310 Operation, maintenance, and inspection of sewage disposal facilities, septic tanks, and wastewater disposal facilities and systems—Maintenance costs. A public utility district as authorized by a county board of health, may perform operation and maintenance, including inspections, of on-site sewage disposal facilities, alternate sewage disposal facilities, approved septic tanks or approved septic tank systems, other facilities and systems for the collection, interception, treatment, and disposal of wastewater, and for the control and protection, preservation, and rehabilitation of surface and underground waters. Those costs associated with the maintenance of private on-site sewage systems may be charged by the public utility district to the system owner. [1990 c 107 § 1.]

**Chapter 54.24
FINANCES**

Sections
54.24.080 Rates and charges.

54.24.080 Rates and charges. (1) The commission of each district which shall have revenue obligations outstanding shall have the power and shall be required to establish, maintain, and collect rates or charges for electric energy and water and other services, facilities, and commodities sold, furnished, or supplied by the district which shall be fair and nondiscriminatory and adequate to provide revenues sufficient for the payment of the principal of and interest on such revenue obligations for which the payment has not otherwise been provided and all payments which the district is obligated to set aside in any special fund or funds created for such purpose, and for the proper operation and maintenance of the public utility and all necessary repairs, replacements, and renewals thereof.

(2) In establishing rates or charges for water service, commissioners may in their discretion consider the achievement of water conservation goals and the discouragement of wasteful water use practices. [1991 c 347 § 21; 1959 c 218 § 9; 1941 c 182 § 7; Rem. Supp. 1941 § 11611-7.]

Purposes—1991 c 347: See note following RCW 90.42.005.

Severability—1991 c 347: See RCW 90.42.900.

**Title 56
SEWER DISTRICTS**

Chapters

- 56.04** Formation and dissolution.
- 56.08** Powers—Comprehensive plan.
- 56.12** Commissioners.
- 56.16** Finances.
- 56.20** Utility local improvement districts.
- 56.24** Annexation of territory.

Chapter 56.04

FORMATION AND DISSOLUTION

Sections
56.04.030 Petition or resolution—Notice of hearing.
56.04.050 Election—Time—Notice—Ballots—Excess tax levy.
56.04.120 Sewerage improvement districts located in counties with populations of from forty thousand to less than seventy thousand become sewer districts.

56.04.030 Petition or resolution—Notice of hearing. For the purpose of formation or reorganization of sewer districts, a petition shall be presented to the county legislative authority of the county in which the proposed sewer district is located, which petition shall set forth the object for the creation or reorganization of the district, shall designate the boundaries thereof and set forth the further fact that the establishment or reorganization of the district will be conducive to the public health, convenience and welfare and will be of benefit to the property included therein. The petition shall specify the proposed property tax levy assessment, if any, which shall not exceed one dollar and twenty-five cents per thousand dollars of assessed value, for general preliminary expenses of the district. The petition shall be signed by at least ten percent of the registered voters residing within the district described in the petition who voted in the last general municipal election: PROVIDED, If in the opinion of the county health officer the existing sewerage disposal facilities are inadequate in the district to be created only, and it is for the public welfare, then the county legislative authority of the county may declare a sewerage disposal district a necessity, and the district shall be organized under the provisions of this title, and all amendments thereto. The petition or resolution shall be filed with the county auditor, who shall, within ten days examine the signatures thereof and certify to the sufficiency or insufficiency. For such purpose the county auditor shall have access to all registration books in the possession of the officers of any political subdivision in such proposed district. No person having signed such a petition shall be allowed to withdraw his or her name therefrom after the filing of the same with the county auditor. If the petition shall be found to contain a sufficient number of signatures, the county auditor shall transmit the same, together with his certificate of sufficiency attached thereto to the county legislative authority. If the petition or resolution is certified to contain a sufficient number of signatures, or if in the opinion of the county health officer the existing sewerage disposal facilities are a menace to the health and convenience of the public, the county legislative authority may, by resolution, and not otherwise, declare a sewerage district a necessity, then at a regular or special meeting of the county legislative authority of such county, the county legislative authority shall cause to be published for at least once a week for two successive weeks in some newspaper of general circulation in the county, giving notice that such a petition has been presented, stating the time of the meeting at which the same shall be presented, and setting forth the boundaries of the proposed

district. [1990 c 259 § 21; 1987 c 33 § 1; 1945 c 140 § 2; 1941 c 210 § 2; Rem. Supp. 1945 § 9425-11.]

Rules governing petition signatures of property owners: RCW 56.02.010.

56.04.050 Election—Time—Notice—Ballots—Excess tax levy. Upon entry of the findings of the final hearing on the petition, if the commissioners find the proposed sewer system will be conducive to the public health, welfare, and convenience and be of special benefit to the land within the boundaries of the proposed or reorganized district, they shall call a special election by presenting a resolution to the county auditor at least forty-five days prior to the proposed election date. A special election will be held on a date decided by the commissioners in accordance with RCW 29.13.010 and 29.13.020. The commissioners shall cause to be published a notice of such election at least once a week for four successive weeks in a newspaper of general circulation in the county, setting forth the hours during which the polls will be open, the boundaries of the proposed or reorganized district as finally adopted, and the object of the election, and the notice shall also be posted for ten days in ten public places in the proposed or reorganized district. The proposition shall be expressed on the ballots in the following terms:

- Sewer District YES
- Sewer District NO

or in the reorganization of a district, the proposition shall be expressed on the ballot in the following terms:

- Sewer District Reorganization YES
- Sewer District Reorganization NO

giving in each instance the name of the district as decided by the board.

At the same election the county legislative authority shall submit a proposition to the voters, for their approval or rejection, authorizing the sewer district, if formed, to levy at the earliest time permitted by law on all property located in the district a general tax for one year, in excess of the tax limitations provided by law, in the amount specified in the petition to create the district, not to exceed one dollar and twenty-five cents per thousand dollars of assessed value, for general preliminary expenses of the district, the proposition to be expressed on the ballots in the following terms:

- One year dollars and cents per thousand dollars of assessed value tax YES
- One year dollars and cents per thousand dollars of assessed value tax NO

Such proposition to be effective must be approved by a majority of at least three-fifths of the registered voters thereof voting on the proposition 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. [1990 c 259 § 22; 1987 c 33 § 2; 1973 1st ex.s.

c 195 § 61; 1953 c 250 § 1; 1945 c 140 § 4; 1941 c 210 § 4; Rem. Supp. 1945 § 9425-13.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043. Levy of taxes: Chapter 84.52 RCW.

56.04.120 Sewerage improvement districts located in counties with populations of from forty thousand to less than seventy thousand become sewer districts. (1) On and after March 16, 1979, any sewerage improvement districts created under Title 85 RCW and located in a county with a population of from forty thousand to less than seventy thousand shall become sewer districts and shall be operated, maintained, and have the same powers as sewer districts created under Title 56 RCW, upon being so ordered by the county legislative authority of the county in which such district is located after a hearing of which notice is given by publication in a newspaper of general circulation within the district and mailed to any known creditors, holders of contracts and obligees at least thirty days prior to such hearing. After such hearing if the county legislative authority finds the converting of such district to be in the best interest of that district, it shall order that such sewer improvement district shall become a sewer district and fix the date of such conversion. All debts, contracts and obligations created while attempting to organize or operate a sewerage improvement district and all other financial obligations and powers of the district to satisfy such obligations established under Title 85 RCW are legal and valid until they are fully satisfied or discharged under Title 85 RCW.

(2) The board of supervisors of a sewerage improvement district in a county with a population of from forty thousand to less than seventy thousand shall act as the board of commissioners of the sewer district created under subsection (1) of this section until other members of the board of commissioners of the sewer district are elected and qualified. There shall be an election on the same date as the 1979 state general election and the seats of all three members of the governing authority of every entity which was previously known as a sewerage improvement district in a county with a population of from forty thousand to less than seventy thousand shall be up for election. The election shall be held in the manner provided for in RCW 56.12.020 for the election of the first board of commissioners of a sewer district. Thereafter, the terms of office of the members of the governing body shall be determined under RCW 56.12.020. [1991 c 363 § 136; 1979 c 35 § 1.]

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

Chapter 56.08
POWERS—COMPREHENSIVE PLAN

- Sections
- 56.08.020 General comprehensive plan—Approval of engineer, director of health, and city, town, or county—Amendments.

- 56.08.100 Health care, group, life, and social security insurance contracts for employees', commissioners' benefit—Joint action with water district. (Effective until January 1, 1992.)
- 56.08.100 Health care, group, life, and social security insurance contracts for employees', commissioners' benefit—Joint action with water district. (Effective January 1, 1992.)
- 56.08.140 Performance bond—Conditions and terms—Duration of leases.
- 56.08.170 Use of property not immediately necessary to district for park or recreational purposes.
- 56.08.200 Sewer connections without district permission—Penalties.

56.08.020 General comprehensive plan—Approval of engineer, director of health, and city, town, or county—Amendments. The sewer commissioners before ordering any improvements hereunder or submitting to vote any proposition for incurring indebtedness shall adopt a general comprehensive plan for a system of sewers for the district. They shall investigate all portions and sections of the district and select a general comprehensive plan for a system of sewers for the district suitable and adequate for present and reasonably foreseeable future needs thereof. The general comprehensive plan shall provide for treatment plants and other methods for the disposal of sewage and industrial and other liquid wastes now produced or which may reasonably be expected to be produced within the district and shall, for such portions of the district as may then reasonably be served, provide for the acquisition or construction and installation of laterals, trunk sewers, intercepting sewers, syphons, pumping stations, or other sewage collection facilities. The general comprehensive plan shall provide the method of distributing the cost and expense of the sewer system provided therein against the district and against utility local improvement districts within the district, including any utility local improvement district lying wholly or partially within any other political subdivision included in the district; and provide whether the whole or some part of the cost and expenses shall be paid from sewer revenue bonds. The commissioners may employ such engineering and legal services as they deem necessary in carrying out the purposes hereof.

The general comprehensive plan shall be adopted by resolution and submitted to an engineer designated by the legislative authority of the county in which fifty-percent or more of the area of the district is located, and to the director of health of the county in which the district or any portion thereof is located, and must be approved in writing by the engineer and director of health. The general comprehensive plan shall be approved, conditionally approved, or rejected by the director of health within sixty days of the plan's receipt and by the designated engineer within sixty days of the plan's receipt. However, this sixty-day time limitation may be extended by the director of health or engineer for up to an additional sixty days if sufficient time is not available to review adequately the general comprehensive plans.

Before becoming effective, the general comprehensive plan shall also be submitted to, and approved by resolution of, the legislative authority of every county within

whose boundaries all or a portion of the sewer district lies. The general comprehensive plan shall be approved, conditionally approved, or rejected by each of these county legislative authorities pursuant to the criteria in RCW 56.02.060 for approving the formation, reorganization, annexation, consolidation, or merger of sewer districts, and the resolution, ordinance, or motion of the legislative body which rejects the comprehensive plan or a part thereof shall specifically state in what particular the comprehensive plan or part thereof rejected fails to meet these criteria. The general comprehensive plan shall not provide for the extension or location of facilities that are inconsistent with the requirements of RCW 36.70A.110. Nothing in this chapter shall preclude a county from rejecting a proposed plan because it is in conflict with the criteria in RCW 56.02.060. Each general comprehensive plan shall be deemed approved if the county legislative authority fails to reject or conditionally approve the plan within ninety days of submission to the county legislative authority or within thirty days of a hearing on the plan when the hearing is held within ninety days of the plan's submission to the county legislative authority. However, a county legislative authority may extend this ninety-day time limitation by up to an additional ninety days where a finding is made that ninety days is insufficient to review adequately the general comprehensive plan. In addition, the sewer commissioners and the county legislative authority may mutually agree to an extension of the deadlines in this section.

If the district includes portions or all of one or more cities or towns, the general comprehensive plan shall be submitted also to, and approved by resolution of, the governing body of such cities and towns before becoming effective. The general comprehensive plan shall be deemed approved by the city or town governing body if the city or town governing body fails to reject or conditionally approve the plan within ninety days of the plan's submission to the city or town or within thirty days of a hearing on the plan when the hearing is held within ninety days of submission to the county legislative authority. However, a city or town governing body may extend this time limitation by up to an additional ninety days where a finding is made that insufficient time exists to adequately review the general comprehensive plan within these time limitations. In addition, the sewer commissioners and the city or town governing body may mutually agree to an extension of the deadlines in this section.

Before becoming effective, any amendment to, alteration of, or addition to, a general comprehensive plan shall also be subject to such approval as if it were a new general comprehensive plan: PROVIDED, That only if the amendment, alteration, or addition, affects a particular city or town, shall the amendment, alteration, or addition be subject to approval by such particular city or town governing body. [1990 1st ex.s. c 17 § 34; 1982 c 213 § 1; 1979 c 23 § 1; 1977 ex.s. c 300 § 1; 1971 ex.s. c 272 § 2; 1959 c 103 § 2; 1953 c 250 § 4; 1947 c 212 § 2; 1945 c 140 § 10; 1943 c 74 § 2; 1941 c 210 § 11; Rem. Supp. 1947 § 9425-20.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Severability—1959 c 103: See note following RCW 56.08.010.

Additions and betterments to original comprehensive plan: RCW 56.16.030.

Construction of sewerage system for municipality: Chapter 35.67 RCW.

56.08.100 Health care, group, life, and social security insurance contracts for employees', commissioners' benefit—Joint action with water district. (Effective until January 1, 1992.) A sewer district, by a majority vote of its board of commissioners, may enter into contracts to provide health care services and/or group insurance and/or term life insurance and/or social security insurance for the benefit of its employees and may pay all or any part of the cost thereof. Any two or more sewer districts or one or more sewer districts and one or more water districts, by a majority vote of their respective boards of commissioners, may, if deemed expedient, join in the procuring of such health care services and/or group insurance and/or term life insurance, and the board of commissioners of each participating sewer and/or water district may by appropriate resolution authorize their respective district to pay all or any portion of the cost thereof.

A sewer district with five thousand or more customers providing health, group, or life insurance to its employees may provide its commissioners with the same coverage: PROVIDED, That the per person amounts for such insurance paid by the district shall not exceed the per person amounts paid by the district for its employees. [1991 c 82 § 1; 1981 c 190 § 5; 1973 c 24 § 1; 1961 c 261 § 1.]

Water districts: Joint health care, group insurance contracts with sewer districts: RCW 57.08.100.

56.08.100 Health care, group, life, and social security insurance contracts for employees', commissioners' benefit—Joint action with water district. (Effective January 1, 1992.) Subject to chapter 48.62 RCW, a sewer district, by a majority vote of its board of commissioners, may enter into contracts to provide health care services and/or group insurance and/or term life insurance and/or social security insurance for the benefit of its employees and may pay all or any part of the cost thereof. Any two or more sewer districts or one or more sewer districts and one or more water districts, by a majority vote of their respective boards of commissioners, may, if deemed expedient, join in the procuring of such health care services and/or group insurance and/or term life insurance, and the board of commissioners of each participating sewer and/or water district may by appropriate resolution authorize their respective district to pay all or any portion of the cost thereof.

A sewer district with five thousand or more customers providing health, group, or life insurance to its employees may provide its commissioners with the same coverage: PROVIDED, That the per person amounts for such insurance paid by the district shall not exceed the per person amounts paid by the district for its employees.

[1991 1st sp.s. c 30 § 24; 1991 c 82 § 1; 1981 c 190 § 5; 1973 c 24 § 1; 1961 c 261 § 1.]

Effective date, implementation, application—Severability—1991 1st sp.s. c 30: See RCW 48.62.900 and 48.62.901.

Water districts: Joint health care, group insurance contracts with sewer districts: RCW 57.08.100.

56.08.140 Performance bond—Conditions and terms—Duration of leases. No such lease shall be made unless secured by a bond conditioned on the performance of the terms of the lease, with surety satisfactory to the commissioners, in a penalty of not less than one-sixth of the term of the lease or for one year's rental, whichever is greater; and no such lease shall be made for a term longer than twenty-five years. However, the board of commissioners may require a reasonable security deposit in lieu of a bond on leased real property owned by the water or sewer district. [1991 c 82 § 2; 1967 c 178 § 3.]

56.08.170 Use of property not immediately necessary to district for park or recreational purposes. A district may operate and maintain a park or recreational facilities on real property that it owns or in which it has an interest that is not immediately necessary for its purposes.

If such park or recreational facilities are operated by a person other than the district, including a corporation, partnership, or other business enterprise, the person shall indemnify and hold harmless the district for any injury or damage caused by the action of the person. [1991 c 82 § 3.]

56.08.200 Sewer connections without district permission—Penalties. It is unlawful and a misdemeanor to make, or cause to be made, or to maintain any sewer connection with any sewer of any sewer district, or with any sewer which is connected directly or indirectly with any sewer of any sewer district without having permission from the sewer district. [1991 c 190 § 1.]

Chapter 56.12 COMMISSIONERS

Sections

56.12.015

56.12.030

Increase in number of commissioners.

Nominations—Vacancies—Elections—Commissioner districts.

56.12.015 Increase in number of commissioners. If a three-member board of commissioners of any sewer district with any number of customers determines by resolution that it would be in the best interest of the district to increase the number of commissioners from three to five, or if the board of a sewer district with any number of customers is presented with a petition signed by ten percent of the registered voters resident within the district who voted in the last general municipal election calling for an increase in the number of commissioners of the district, the board shall submit a resolution to the county auditor requesting that an election be held. Upon

receipt of the resolution, the county auditor shall call a special election to be held within the sewer district in accordance with RCW 29.13.010 and 29.13.020, at which election a proposition in substantially the following language shall be submitted to the voters:

Shall the Board of Commissioners of (Name and/or No. of sewer district) be increased from three to five members?

Yes -----
No -----

If the proposition receives a majority approval at the election the board of commissioners of the sewer district shall be increased to five members. In any sewer district with more than ten thousand customers, if a three-member board of commissioners determines by resolution and approves by unanimous vote of the board that it would be in the best interest of the district to increase the number of commissioners from three to five, the number of commissioners shall be so increased, without an election, unless within ninety days of adoption of that resolution, a petition requesting an election and signed by at least ten percent of the registered voters who voted in the last general municipal election is filed with the board. If such a petition is received, the board shall submit the resolution and the petition to the county auditor, who shall call a special election in the manner described in this section and in accordance with the provisions of RCW 29.13.010 and 29.13.020.

The two positions created on boards of sewer commissioners by this section shall be filled initially as for a vacancy, except that the appointees shall draw lots, one appointee to serve until the next general sewer district election after the appointment, at which two commissioners shall be elected for six-year terms, and the other appointee to serve until the second general sewer district election after the appointment, at which two commissioners shall be elected for six-year terms. [1991 c 190 § 2; 1990 c 259 § 23; 1987 c 449 § 3.]

56.12.030 Nominations—Vacancies—Elections—Commissioner districts. (1) Nominations for the first board of commissioners to be elected at the election for the formation of the sewer district shall be by petition of fifty registered voters or ten percent of the registered voters of the district who voted in the last general municipal election, whichever is the smaller. The petition shall be filed in the auditor's office of the county in which the district is located at least forty-five days before the election. Thereafter candidates for the office of sewer commissioner shall file declarations of candidacy and their election shall be conducted as provided by the general elections laws. A vacancy or vacancies shall be filled by appointment by the remaining commissioner or commissioners until the next regular election for commissioners: **PROVIDED**, That if there are two vacancies on the board, one vacancy shall be filled by appointment by the remaining commissioner and the one remaining vacancy shall be filled by appointment by the then two commissioners and the appointed commissioners shall serve until the next regular election for

commissioners. If the vacancy or vacancies remain unfilled within six months of its or their occurrence, the county legislative authority in which the district is located shall make the necessary appointment or appointments. If there is a vacancy of the entire board a new board may be appointed by the county legislative authority. Any person residing in the district who is at the time of election a registered voter may vote at any election held in the sewer district.

(2) Subsection (1) of this section notwithstanding, the board of commissioners may provide by majority vote that subsequent commissioners be elected from commissioner districts within the district. If the board exercises this option, it shall divide the district into three commissioner districts of approximately equal population following current precinct and district boundaries. Thereafter, candidates shall be nominated and one candidate shall be elected from each commissioner district by the registered voters of the commissioner district.

(3) All expense of elections for the formation or reorganization of a sewer district shall be paid by the county in which the election is held and the expenditure is hereby declared to be for a county purpose, and the money paid for that purpose shall be repaid to the county by the district if formed or reorganized. [1990 c 259 § 24; 1986 c 41 § 1; 1985 c 141 § 3; 1981 c 169 § 2; 1953 c 250 § 9; 1947 c 212 § 1; 1945 c 140 § 7; 1941 c 210 § 8; Rem. Supp. 1947 § 9425-17.]

**Chapter 56.16
FINANCES**

Sections
56.16.090 Rates and charges—Classification of services.

56.16.090 Rates and charges—Classification of services. The sewer commissioners of any sewer district, in the event that such sewer revenue bonds are issued, shall provide for revenues by fixing rates and charges for the furnishing of sewerage disposal service to those to whom such service is available. Such rates and charges may be combined for the furnishing of more than one type of sewer service such as but not limited to storm or surface water and sanitary. Such rates and charges are to be fixed as deemed necessary by such sewer commissioners, so that uniform charges will be made for the same class of customer or service.

In classifying customers served or service furnished by such system of sewerage, the board of commissioners may in its discretion consider any or all of the following factors: The difference in cost of service to the various customers; the location of the various customers within and without the district; the difference in cost of maintenance, operation, repair, and replacement of the various parts of the system; the different character of the service furnished various customers; the quantity and quality of the sewage delivered and the time of its delivery; the achievement of water conservation goals and the discouragement of wasteful water use practices; capital

contributions made to the system including but not limited to assessments; and any other matters which present a reasonable difference as a ground for distinction. Such rates are to be made on a monthly basis and shall produce revenues sufficient to take care of the costs of maintenance and operation, revenue bond and warrant interest and principal amortization requirements, and all other charges necessary for efficient and proper operation of the system. [1991 c 347 § 19; 1974 ex.s. c 58 § 3; 1959 c 103 § 11; 1941 c 210 § 22; Rem. Supp. 1941 § 9425-31.]

Purposes—1991 c 347: See note following RCW 90.42.005.

Severability—1991 c 347: See RCW 90.42.900.

Severability—1959 c 103: See note following RCW 56.08.010.

Authority to adjust or delay rates and charges for low-income persons: RCW 56.08.014.

Public property subject to rates and charges for storm water control facilities: RCW 56.08.012.

Chapter 56.20

UTILITY LOCAL IMPROVEMENT DISTRICTS

Sections

56.20.030	Hearing—Improvement ordered—Divestment of power to order—Notice—Appeal—Assessment roll.
56.20.080	Review.

56.20.030 Hearing—Improvement ordered—Divestment of power to order—Notice—Appeal—Assessment roll. Whether the improvement is initiated by petition or resolution, the board shall conduct a public hearing at the time and place designated in the notice to property owners. At this hearing the board shall hear objections from any person affected by the formation of the local district and may make such changes in the boundaries of the district or such modifications in plans for the proposed improvement as shall be deemed necessary. The board may not change the boundaries of the district to include property not previously included in it without first passing a new resolution of intention and giving a new notice to property owners in the manner and form and within the time provided in this chapter for the original notice.

After the hearing and the expiration of the ten-day period for filing written protests, the commissioners shall have jurisdiction to overrule protests and proceed with any such improvement initiated by petition or resolution. The jurisdiction of the commissioners to proceed with any improvement initiated by resolution shall be divested: (a) By protests filed with the secretary of the board no later than ten days after the hearing, signed by the owners, according to the records of the county auditor, of at least forty percent of the area of land within the proposed local district or (b) by the commissioners not adopting a resolution ordering the improvement at a public hearing held not more than ninety days from the day the resolution of intention was adopted, unless the commissioners file with the county auditor a copy of the notice required by RCW 56.20.020, and in no event at a

hearing held more than two years from the day the resolution of intention was adopted.

If the commissioners find that the district should be formed, they shall by resolution form the district and order the improvement. After execution of the resolution forming the district, the secretary of the board of commissioners shall publish, in a legal publication that serves the area subject to the district, a notice setting forth that a resolution has been passed forming the district and that a lawsuit challenging the jurisdiction or authority of the sewer district to proceed with the improvement and creating the district must be filed, and notice to the sewer district served, within thirty days of the publication of the notice. The notice shall set forth the nature of the appeal. Property owners bringing the appeal shall follow the procedures as set forth under appeal under RCW 56.20.080. Whenever a resolution forming a district has been adopted, the formation is conclusive in all things upon all parties, and cannot be contested or questioned in any manner in any proceeding whatsoever by any person not commencing a lawsuit in the manner and within the time provided in this section, except for lawsuits made under RCW 56.20.080.

Following an appeal, if it is unsuccessful or if no appeal is made under RCW 56.20.080, the commissioners may proceed with the improvement and provide the general funds of the sewer district to be applied thereto, adopt detailed plans of the utility local improvement district and declare the estimated cost thereof, acquire all necessary land therefor, pay all damages caused thereby, and commence in the name of the sewer district such eminent domain proceedings and supplemental assessment or reassessment proceedings to pay all eminent domain awards as may be necessary to entitle the district to proceed with the work. The board of sewer commissioners shall proceed with the work and file with the county treasurer of each county in which the real property is to be assessed its roll levying special assessments in the amount to be paid by special assessment against the property situated within the local improvement district in proportion to the special benefits to be derived by the property therein from the improvement. [1991 c 190 § 3; 1986 c 256 § 2; 1974 ex.s. c 58 § 6; 1971 ex.s. c 272 § 9; 1953 c 250 § 18; 1941 c 210 § 28; Rem. Supp. 1941 § 9425-37.]

56.20.080 Review. The decision of the sewer commission upon any objections made within the time and in the manner herein prescribed, may be reviewed by the superior court upon an appeal thereto taken in the following manner. Such appeal shall be made by filing written notice of appeal with the secretary of said sewer commission and with the clerk of the superior court in the county in which the real property is situated within ten days after publication of a notice that the resolution confirming such assessment roll has been adopted, and such notice of appeal shall describe the property and set forth the objections of such appellant to such assessment. Within ten days from the filing of such notice of appeal with the clerk of the superior court, the appellant

shall file with the clerk of said court, a transcript consisting of the assessment roll and his or her objections thereto, together with the resolution confirming such assessment roll and the record of the sewer district commission with reference to said assessment, which transcript, upon payment of the necessary fees therefor, shall be furnished by such secretary of said sewer commission and by him or her certified to contain full, true and correct copies of all matters and proceedings required to be included in such transcript. Such fees shall be the same as the fees payable to the county clerk for the preparation and certification of transcripts on appeal to the supreme court or the court of appeals in civil actions. At the time of the filing of the notice of appeal with the clerk of the superior court a sufficient bond in the penal sum of two hundred dollars, with sureties thereon as provided by law for appeals in civil cases, shall be filed conditioned to prosecute such appeal without delay, and if unsuccessful, to pay all costs to which the sewer district is put by reason of such appeal. The court may order the appellant upon application therefor, to execute and file such additional bond or bonds as the necessity of the case may require. Within three days after such transcript is filed in the superior court, as aforesaid, the appellant shall give written notice to the secretary of such sewer district, that such transcript is filed. Said notice shall state a time, not less than three days from the service thereof, when the appellant will call up the said cause for hearing. The superior court shall, at said time or at such further time as may be fixed by order of the court, hear and determine such appeal without a jury, and such cause shall have preference over all civil causes pending in said court, except proceedings under an act relating to eminent domain in such sewer district and actions of forcible entry and detainer. The judgment of the court shall confirm, unless the court shall find from the evidence that such assessment is either founded upon a fundamentally wrong basis or a decision of the council or other legislative body thereon was arbitrary or capricious, or both; in which event the judgment of the court shall correct, modify or annul the assessment insofar as the same affects the property of the appellant. A certified copy of the decision of the court shall be filed with the officer who shall have the custody of the assessment roll, and he or she shall modify and correct such assessment roll in accordance with such decision. An appeal shall lie to the supreme court or the court of appeals from the judgment of the superior court, as in other cases, however, such appeal must be taken within fifteen days after the date of the entry of the judgment of such superior court, and the record and opening brief of the appellant in said cause shall be filed in the supreme court or the court of appeals within sixty days after the appeal shall have been taken by notice as provided in this title. The time for filing such record and serving and filing of briefs in this section prescribed may be extended by order of the superior court, or by stipulation of the parties concerned. The supreme court or the court of appeals on such appeal may correct, change, modify, confirm or annul the assessment insofar as the same affects the property of

the appellant. A certified copy of the order of the supreme court or the court of appeals upon such appeal shall be filed with the officer having custody of such assessment roll, who shall thereupon modify and correct such assessment roll in accordance with such decision. [1991 c 190 § 4; 1971 ex.s. c 272 § 11; 1971 c 81 § 125; 1965 ex.s. c 40 § 2; 1941 c 210 § 32; Rem. Supp. 1941 § 9425-41.]

Rules of court: Cf. RAP 2.2, 5.2, 8.1, 18.22.

Chapter 56.24

ANNEXATION OF TERRITORY

Sections

56.24.070	Annexation authorized—Petition—Filing—Certificate of sufficiency—Notice of hearing.
56.24.200	Annexation of certain unincorporated territory—Referendum authorized—Petition—Election—Effective date of annexation.

56.24.070 Annexation authorized—Petition—Filing—Certificate of sufficiency—Notice of hearing. Territory within the county or counties in which a district is located, or territory adjoining or in close proximity to a district but which is located in another county, may be annexed to and become a part of the district. All annexations shall be accomplished in the following manner: Ten percent of the number of registered voters residing in the territory proposed to be annexed who voted in the last general municipal election may file a petition with the district commissioners and cause the question to be submitted to the voters of the territory whether the territory will be annexed and become a part of the district. If the commissioners concur in the petition, they shall file it with the county auditor, who shall, within ten days, examine the signatures thereon and certify to the sufficiency or insufficiency thereof; and for such purpose the county auditor shall have access to all registration books in the possession of the officers of any city or town in the proposed district. If the petition contains a sufficient number of signatures, the county auditor shall transmit it, together with a certificate of sufficiency attached thereto to the sewer commissioners of the district. If there are no registered voters residing in the territory to be annexed, the petition may be signed by such a number as appear of record to own at least a majority of the acreage in the territory, and the petition shall disclose the total number of acres of land in the territory and the names of all record owners of land therein. If the commissioners are satisfied as to the sufficiency of the petition and concur therein, they shall send it, together with their certificate of concurrence attached thereto to the county legislative authority.

The county legislative authority, upon receipt of a petition certified to contain a sufficient number of signatures of registered voters, or upon receipt of a petition signed by such a number as own at least a majority of the acreage, together with a certificate of concurrence signed by the sewer commissioners, at a regular or special meeting shall cause to be published once a week for at least two weeks in a newspaper in general circulation

throughout the territory proposed to be annexed a notice that the petition has been filed, stating the time of the meeting at which it shall be presented, and setting forth the boundaries of the territory proposed to be annexed. [1990 c 259 § 25; 1989 c 308 § 3; 1988 c 162 § 13; 1985 c 469 § 56; 1982 1st ex.s. c 17 § 3; 1967 ex.s. c 11 § 1.]

56.24.200 Annexation of certain unincorporated territory—Referendum authorized—Petition—Election—Effective date of annexation. Such annexation resolution under RCW 56.24.190 shall be subject to referendum for forty-five days after the passage thereof. Upon the filing of a timely and sufficient referendum petition with the board of commissioners, signed by registered voters in number equal to not less than ten percent of the registered voters in the area to be annexed who voted in the last general municipal election, the question of annexation shall be submitted to the voters of such area in a general election if one is to be held within ninety days or at a special election called for that purpose by the board of commissioners in accordance with RCW 29.13.010 and 29.13.020. Notice of such election shall be given under RCW 56.24.080 and the election shall be conducted under RCW 56.24.090. The annexation shall be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition thereto.

After the expiration of the forty-fifth day from but excluding the date of passage of the annexation resolution, if no timely and sufficient referendum petition has been filed, the area annexed shall become a part of the sewer district upon the date fixed in the resolution of annexation upon transmitting the resolution to the county legislative authority. [1990 c 259 § 26; 1982 c 146 § 3.]

Title 57

WATER DISTRICTS

Chapters

- 57.04** Formation and dissolution.
- 57.08** Powers.
- 57.12** Officers and elections.
- 57.16** Comprehensive plan—Local improvement districts.
- 57.20** Finances.
- 57.24** Annexation of territory.
- 57.90** Disincorporation of water and other districts in class A or AA counties.

Chapter 57.04

FORMATION AND DISSOLUTION

Sections

- 57.04.030 Petition procedure—Hearing—Boundaries.
- 57.04.050 Election—Notice—Ballots—Excess tax levy.

57.04.030 Petition procedure—Hearing—Boundaries. For the purpose of formation of water districts, a petition shall be presented to the county legislative authority of each county in which the proposed water district is located, which petition shall set forth the object for the creation of the district, shall designate the boundaries thereof and set forth the further fact that establishment of the district will be conducive to the public health, convenience and welfare and will be of benefit to the property included in the district. The petition shall specify the proposed property tax levy assessment, if any, which shall not exceed one dollar and twenty-five cents per thousand dollars of assessed value, for general preliminary expenses of the district. The petition shall be signed by at least ten percent of the registered voters who voted in the last general municipal election, who shall be qualified electors on the date of filing the petition, residing within the district described in the petition. The petition shall be filed with the county auditor of each county in which the proposed district is located, who shall, within ten days examine and verify the signatures of the signers residing in the county; and for such purpose the county election official shall have access to all registration books in the possession of the officers of any incorporated city or town in such proposed district. No person having signed such a petition shall be allowed to withdraw his name from the petition after the filing of the petition with the county election officer. The petition shall be transmitted to the election officer of the county in which the largest land area of the district is located who shall certify to the sufficiency or insufficiency of the number of signatures. If the petition shall be found to contain a sufficient number of signatures, the county election officer shall then transmit the same, together with a certificate of sufficiency attached thereto to the county legislative authority of each county in which the proposed district is located. Following receipt of a petition certified to contain a sufficient number of signatures, at a regular or special meeting the county legislative authority shall cause to be published once a week for at least two weeks in one or more newspapers of general circulation in the proposed district, a notice that such a petition has been presented, stating the time of the meeting at which the petition shall be considered, and setting forth the boundaries of the proposed district. When such a petition is presented for hearing, each county legislative authority shall hear the petition or may adjourn the hearing from time to time not exceeding one month in all. Any person, firm, or corporation may appear before the county legislative authority and make objections to the establishment of the district or the proposed boundary lines thereof. Upon a final hearing each county legislative authority shall make such changes in the proposed boundary lines within the county as it deems to be proper and shall establish and define the boundaries and shall find whether the proposed water district will be conducive to the public health, welfare and convenience and be of special benefit to the land included within the boundaries of the proposed district. No lands which will not, in the judgment of the county legislative authority,

be benefited by inclusion therein, shall be included within the boundaries of the district. No change shall be made by the county legislative authority in the boundary lines to include any territory outside of the boundaries described in the petition, except that the boundaries of any proposed district may be extended by the county legislative authority to include other lands in the county upon a petition signed by the owners of all of the land within the proposed extension. [1990 c 259 § 27; 1987 c 33 § 3; 1985 c 469 § 58; 1982 1st ex.s. c 17 § 10; 1931 c 72 § 3; 1929 c 114 § 2; RRS § 11580. Cf. 1915 c 24 § 1; 1913 c 161 § 2. Formerly RCW 57.04.030 and 57.04.040.]

57.04.050 Election—Notice—Ballots—Excess tax levy. Upon entry of the findings of the final hearing on the petition if one or more county legislative authorities find that the proposed district will be conducive to the public health, welfare, and convenience and be of special benefit to the land therein, they shall call a special election by presenting a resolution to the county auditor at least forty-five days prior to the proposed election date. A special election will be held on a date decided by the commissioners in accordance with RCW 29.13.010 and 29.13.020. The commissioners shall cause to be published a notice of the election for four successive weeks in a newspaper of general circulation in the proposed district, which notice shall state the hours during which the polls will be open, the boundaries of the district as finally adopted and the object of the election, and the notice shall also be posted for ten days in ten public places in the proposed district. In submitting the proposition to the voters, it shall be expressed on the ballots in the following terms:

Water District YES
Water District NO

giving the name of the district as provided in the petition.

At the same election a proposition shall be submitted to the voters, for their approval or rejection, authorizing the water district, if formed, to levy at the earliest time permitted by law on all property located in the district a general tax for one year, in excess of the limitations provided by law, in the amount specified in the petition to create the district, not to exceed one dollar and twenty-five cents per thousand dollars of assessed value, for general preliminary expenses of the district, the proposition to be expressed on the ballots in the following terms:

One year ----- dollars and
----- cents per thousand
dollars of assessed value tax YES
One year ----- dollars and
----- cents per thousand
dollars of assessed value tax NO

Such proposition to be effective must be approved by a majority of at least three-fifths of the registered voters thereof voting on the proposition 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. [1990 c 259 § 28; 1987 c 33 § 4; 1982 1st ex.s. c 17 § 11; 1973 1st ex.s. c 195 § 67; 1953 c 251 § 1; 1931 c 72 § 4; 1929 c 114 § 3; RRS § 11581. Cf. 1927 c 230 § 1; 1915 c 24 § 2; 1913 c 161 § 3.]

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

**Chapter 57.08
POWERS**

Sections
57.08.010 Right to acquire property and rights—Eminent domain—Leases—Generation of electricity—Rates and charges—Use of property for park or recreational purposes.
57.08.100 Health care, group, life, and social security insurance contracts for employees', commissioners' benefit—Joint action with sewer district. (Effective until January 1, 1992.)
57.08.100 Health care, group, life, and social security insurance contracts for employees', commissioners' benefit—Joint action with sewer district. (Effective January 1, 1992.)
57.08.120 Lease of real property—Notice, contents, publication—Performance bond or security.
57.08.170 Water conservation plan—Emergency water use restrictions—Fine.
57.08.180 Sewer connections without district permission—Penalties.

57.08.010 Right to acquire property and rights—Eminent domain—Leases—Generation of electricity—Rates and charges—Use of property for park or recreational purposes. (1)(a) A water district may acquire by purchase or condemnation, or both, all property and property rights and all water and water rights, both within and without the district, necessary for its purposes.

(b) A water district may lease real or personal property necessary for its purposes for a term of years for which such leased property may reasonably be needed where in the opinion of the board of water commissioners such property may not be needed permanently or substantial savings to the district can be effected thereby.

(c) The right of eminent domain shall be exercised in the same manner and by the same procedure as provided for cities of the third class, insofar as consistent with the provisions of this title, except that all assessment rolls to be prepared and filed by eminent domain commissioners or commissioners appointed by the court shall be prepared and filed by the water district, and the duties devolving upon the city treasurer are hereby imposed upon the county treasurer.

(d) A water district may construct, condemn and purchase, purchase, add to, maintain, and supply waterworks to furnish the district and inhabitants thereof, and any city or town therein and any other persons, both within and without the district, with an ample supply of water for all uses and purposes public and private with full authority to regulate and control the use, content, distribution, and price thereof in such a manner as is not in conflict with general law and may construct, acquire,

or own buildings and other necessary district facilities. Where a customer connected to the district's system uses the water on an intermittent or transient basis, a district may charge for providing water service to such a customer, regardless of the amount of water, if any, used by the customer.

(e) A water district contiguous to Canada may contract with a Canadian corporation for the purchase of water and for the construction, purchase, maintenance, and supply of waterworks to furnish the district and inhabitants thereof and residents of Canada with an ample supply of water under terms approved by the board of commissioners. Such waterworks may include facilities which result in combined water supply and electric generation, provided that the electricity generated thereby is a byproduct of the water supply system.

(f) Such electricity may be used by the water district or sold to any entity authorized by law to distribute electricity. Such electricity is a byproduct when the electrical generation is subordinate to the primary purpose of water supply.

(g) For such purposes, a water district may take, condemn and purchase, purchase, acquire, and retain water from any public or navigable lake, river, or watercourse, or any underflowing water and, by means of aqueducts or pipe line conduct the same throughout such water district and any city or town therein and carry it along and upon public highways, roads, and streets, within and without such district.

(h) For the purpose of constructing or laying aqueducts or pipe lines, dams, or waterworks or other necessary structures in storing and retaining water or for any other lawful purpose such water district may occupy the beds and shores up to the high water mark of any such lake, river, or other watercourse, and may acquire by purchase or condemnation such property or property rights or privileges as may be necessary to protect its water supply from pollution.

(i) For the purposes of waterworks which include facilities for the generation of electricity as a byproduct, nothing in this section may be construed to authorize a water district to condemn electric generating, transmission, or distribution rights or facilities of entities authorized by law to distribute electricity, or to acquire such rights or facilities without the consent of the owner.

(2) A water district may purchase and take water from any municipal corporation.

(3) A water district may fix rates and charges for water supplied and may charge property owners seeking to connect to the district's water supply system, as a condition to granting the right to so connect, in addition to the cost of such connection, such reasonable connection charge as the board of commissioners shall determine to be proper in order that such property owners shall bear their equitable share of the cost of such system.

(a) For purposes of calculating a connection charge, the board of commissioners shall determine the pro rata share of the cost of existing facilities and facilities planned for construction within the next ten years and contained in an adopted comprehensive plan and other

costs borne by the district which are directly attributable to the improvements required by property owners seeking to connect to the system. The cost of existing facilities shall not include those portions of the system which have been donated or which have been paid for by grants.

(b) The connection charge may include interest charges applied from the date of construction of the water system until the connection, or for a period not to exceed ten years, whichever is shorter, at a rate commensurate with the rate of interest applicable to the district at the time of construction or major rehabilitation of the water system, or at the time of installation of the water lines to which the property owner is seeking to connect.

(4)(a) A district may permit payment of the cost of connection and the reasonable connection charge to be paid with interest in installments over a period not exceeding fifteen years. The county treasurer may charge and collect a fee of three dollars for each year for the treasurer's services. Such fees shall be a charge to be included as part of each annual installment, and shall be credited to the county current expense fund by the county treasurer.

(b) Revenues from connection charges excluding permit fees are to be considered payments in aid of construction as defined by department of revenue rule.

(5) A district may operate and maintain a park or recreational facilities on real property that it owns or in which it has an interest that is not immediately necessary for its purposes.

(6) If such park or recreational facilities are operated by a person other than the district, including a corporation, partnership, or other business enterprise, the person shall indemnify and hold harmless the district for any injury or damage caused by the action of the person. [1991 c 82 § 4. Prior: 1989 c 389 § 9; 1989 c 308 § 2; 1988 c 11 § 1; 1987 c 449 § 10; 1985 c 444 § 4; 1959 c 108 § 1; 1929 c 114 § 8; RRS § 11586. Cf. 1913 c 161 § 8.]

~~Intent—Construction—Severability—1985 c 444:~~ See notes following RCW 35.92.010.

Eminent domain

generally: State Constitution Art. 1 § 16.

third class cities: RCW 35.24.310.

Evaluation of application to appropriate water for electric generation facility: RCW 90.54.170.

57.08.100 Health care, group, life, and social security insurance contracts for employees', commissioners' benefit—Joint action with sewer district. (Effective until January 1, 1992.) A water district, by a majority vote of its board of commissioners, may enter into contracts to provide health care services and/or group insurance and/or term life insurance and/or social security insurance for the benefit of its employees and may pay all or any part of the cost thereof. Any two or more water districts or any one or more water districts and one or more sewer districts, by a majority vote of their respective boards of commissioners, may, if deemed expedient, join in the procuring of such health care services and/or group insurance and/or term life insurance,

and the board of commissioners of each participating sewer and/or water district may by appropriate resolution authorize their respective district to pay all or any portion of the cost thereof.

A water district with five thousand or more customers providing health, group, or life insurance to its employees may provide its commissioners with the same coverage: PROVIDED, That the per person amounts for such insurance paid by the district shall not exceed the per person amounts paid by the district for its employees. [1991 c 82 § 5; 1981 c 190 § 6; 1973 c 24 § 2; 1961 c 261 § 2.]

Sewer districts: Joint health care, group insurance contracts with water districts: RCW 56.08.100.

57.08.100 Health care, group, life, and social security insurance contracts for employees', commissioners' benefit—Joint action with sewer district. (Effective January 1, 1992.) Subject to chapter 48.62 RCW, a water district, by a majority vote of its board of commissioners, may enter into contracts to provide health care services and/or group insurance and/or term life insurance and/or social security insurance for the benefit of its employees and may pay all or any part of the cost thereof. Any two or more water districts or any one or more water districts and one or more sewer districts, by a majority vote of their respective boards of commissioners, may, if deemed expedient, join in the procuring of such health care services and/or group insurance and/or term life insurance, and the board of commissioners of each participating sewer and/or water district may by appropriate resolution authorize their respective district to pay all or any portion of the cost thereof.

A water district with five thousand or more customers providing health, group, or life insurance to its employees may provide its commissioners with the same coverage: PROVIDED, That the per person amounts for such insurance paid by the district shall not exceed the per person amounts paid by the district for its employees. [1991 1st sp.s. c 30 § 25; 1991 c 82 § 5; 1981 c 190 § 6; 1973 c 24 § 2; 1961 c 261 § 2.]

Effective date, implementation, application—Severability—1991 1st sp.s. c 30: See RCW 48.62.900 and 48.62.901.

Sewer districts, joint health care, group insurance contracts with water districts: RCW 56.08.100.

57.08.120 Lease of real property—Notice, contents, publication—Performance bond or security. A water district may lease out real 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 water commissioners deems proper: PROVIDED, That no such lease shall be made until the water district has first caused notice thereof to be published twice in a newspaper in general circulation in the water district, the first publication to be at least fifteen days and the second at least seven days prior to the making of such lease, which notice shall describe the property proposed to be leased out, to whom, for what purpose, and the rental to be charged therefor. A hearing shall be held pursuant to the terms of the said notice, at which

time any and all persons who may be interested shall have the right to appear and to be heard.

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: PROVIDED, That the penalty shall not be less than the rental for one year where the term is one year or more. 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. However, the board of commissioners may require a reasonable security deposit in lieu of a bond on leased real property owned by a water district.

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. [1991 c 82 § 6; 1967 ex.s. c 135 § 1.]

57.08.170 Water conservation plan—Emergency water use restrictions—Fine. A water district may adopt a water conservation plan and emergency water use restrictions. The district may enforce a water conservation plan and emergency water use restrictions by imposing a fine as provided by resolution for failure to comply with any such plan or restrictions. The commissioners may provide by resolution that if a fine for failure to comply with the water conservation plan or emergency water use restrictions is delinquent for a specified period of time, the district shall certify the delinquency to the treasurer of the county in which the real property is located and serve notice of the delinquency on the subscribing water customer who fails to comply, and the fine is then a separate item for inclusion on the bill of the party failing to comply with the water conservation plan or emergency water use restrictions. [1991 c 82 § 7.]

57.08.180 Sewer connections without district permission—Penalties. It is unlawful and a misdemeanor to make, or cause to be made, or to maintain any sewer

connection with any sewer of any water district, or with any sewer which is connected directly or indirectly with any sewer of any water district without having permission from the water district. [1991 c 190 § 5.]

Chapter 57.12 OFFICERS AND ELECTIONS

Sections

- 57.12.015 Increase in number of commissioners.
57.12.020 Commissioners, nomination, declaration of candidacy, election law, vacancies—Who may vote.

57.12.015 Increase in number of commissioners. In the event a three-member board of commissioners of any water district with any number of customers determines by resolution that it would be in the best interest of the district to increase the number of commissioners from three to five, or in the event the board of a district with any number of customers is presented with a petition signed by ten percent of the registered voters resident within the district who voted in the last general municipal election calling for an increase in the number of commissioners of the district, the board shall submit a resolution to the county auditor requesting that an election be held. Upon receipt of the resolution, the county auditor shall call a special election to be held within the water district in accordance with RCW 29.13.010 and 29.13.020, at which election a proposition in substantially the following language shall be submitted to the voters:

Shall the Board of Commissioners of (Name and/or No. of water district) be increased from three to five members?

Yes -----

No -----

If the proposition receives a majority approval at the election the board of commissioners of the water district shall be increased to five members. In any water district with more than ten thousand customers, if a three-member board of commissioners determines by resolution and approves by unanimous vote of the board that it would be in the best interest of the district to increase the number of commissioners from three to five, the number of commissioners shall be so increased, without an election, unless within ninety days of adoption of that resolution a petition requesting an election and signed by at least ten percent of the registered voters who voted in the last general municipal election is filed with the board. If such a petition is received, the board shall submit the resolution and the petition to the county auditor, who shall call a special election in the manner described in this section and in accordance with the provisions of RCW 29.13.010 and 29.13.020.

The two positions created on boards of water commissioners by this section shall be filled initially as for a vacancy, except that the appointees shall draw lots, one appointee to serve until the next general water district election after the appointment, at which two commissioners shall be elected for six-year terms, and the other

appointee to serve until the second general water district election after the appointment, at which two commissioners shall be elected for six-year terms. [1991 c 190 § 6; 1990 c 259 § 29; 1987 c 449 § 12.]

57.12.020 Commissioners, nomination, declaration of candidacy, election law, vacancies—Who may vote. Nominations for the first board of commissioners to be elected at the election for the formation of the water district shall be by petition of at least ten percent of the registered voters of the district who voted in the last general municipal election, filed in the auditor's office of the county in which the district is located, at least forty-five days prior to the election. Thereafter, candidates for the office of water commissioners shall file declarations of candidacy and their election shall be conducted as provided by the general election laws. A vacancy or vacancies on the board shall be filled by appointment by the remaining commissioner or commissioners until the next regular election for commissioners: **PROVIDED**, That if there are two vacancies on the board, one vacancy shall be filled by appointment by the remaining commissioner and the one remaining vacancy shall be filled by appointment by the then two commissioners and the appointed commissioners shall serve until the next regular election for commissioners. If the vacancy or vacancies remain unfilled within six months of its or their occurrence, the county legislative authority in which the district is located shall make the necessary appointment or appointments. If there is a vacancy of the entire board a new board may be appointed by the county legislative authority.

Any person residing in the district who is a registered voter under the laws of the state may vote at any district election. [1990 c 259 § 30; 1985 c 141 § 7; 1981 c 169 § 1; 1975 1st ex.s. c 188 § 14; 1959 c 18 § 3. Prior: 1953 c 251 § 4; 1947 c 216 § 1, part; 1945 c 50 § 1, part; 1931 c 72 § 1, part; 1929 c 114 § 6, part; Rem. Supp. 1947 § 11584, part. Cf. 1913 c 161 § 7, part.]

Severability—1975 1st ex.s. c 188: See RCW 36.94.921.

Chapter 57.16 COMPREHENSIVE PLAN—LOCAL IMPROVEMENT DISTRICTS

Sections

- 57.16.010 General comprehensive plan of improvements—Approval of engineer, director of health, and city, town, or county—Amendments.
57.16.060 Resolution or petition to form district—Procedure—Written protest—Notice—Appeal—Improvement ordered—Divestment of power to order.
57.16.090 Review.

57.16.010 General comprehensive plan of improvements—Approval of engineer, director of health, and city, town, or county—Amendments. The water district commissioners before ordering any improvements hereunder or submitting to vote any proposition for incurring any indebtedness shall adopt a general comprehensive

plan of water supply for the district. They shall investigate the several portions and sections of the district for the purpose of determining the present and reasonably foreseeable future needs thereof; shall examine and investigate, determine and select a water supply or water supplies for such district suitable and adequate for present and reasonably foreseeable future needs thereof; and shall consider and determine a general system or plan for acquiring such water supply or water supplies; and the lands, waters and water rights and easements necessary therefor, and for retaining and storing any such waters, erecting dams, reservoirs, aqueducts and pipe lines to convey the same throughout such district. There may be included as part of the system the installation of fire hydrants at suitable places throughout the district, and the purchase and maintenance of necessary fire fighting equipment and apparatus, together with facilities for housing same. The water district commissioners shall determine a general comprehensive plan for distributing such water throughout such portion of the district as may then reasonably be served by means of subsidiary aqueducts and pipe lines, and the method of distributing the cost and expense thereof against such water district and against local improvement districts or utility local improvement districts within such water district for any lawful purpose, and including any such local improvement district or utility local improvement district lying wholly or partially within the limits of any city or town in such district, and shall determine whether the whole or part of the cost and expenses shall be paid from water revenue bonds. After July 23, 1989, when the district adopts a general comprehensive plan or plans for an area annexed as provided for in RCW 57.16.010, the district shall include a long-term plan for financing the planned projects. The commissioners may employ such engineering and legal service as in their discretion is necessary in carrying out their duties.

The general comprehensive plan shall be adopted by resolution and submitted to an engineer designated by the legislative authority of the county in which fifty-one percent or more of the area of the district is located, and to the director of health of the county in which the district or any portion thereof is located, and must be approved in writing by the engineer and director of health. The general comprehensive plan shall be approved, conditionally approved, or rejected by the director of health within sixty days of the plan's receipt and by the designated engineer within sixty days of the plan's receipt. However, this sixty-day time limitation may be extended by the director of health or engineer for up to an additional sixty days if sufficient time is not available to review adequately the general comprehensive plans.

Before becoming effective, the general comprehensive plan shall also be submitted to, and approved by resolution of, the legislative authority of every county within whose boundaries all or a portion of the water district lies. The general comprehensive plan shall be approved, conditionally approved, or rejected by each of these county legislative authorities pursuant to the criteria in RCW 57.02.040 for approving the formation, reorganization, annexation, consolidation, or merger of water

districts, and the resolution, ordinance, or motion of the legislative body which rejects the comprehensive plan or a part thereof shall specifically state in what particular the comprehensive plan or part thereof rejected fails to meet these criteria. The general comprehensive plan shall not provide for the extension or location of facilities that are inconsistent with the requirements of RCW 36.70A.110. Nothing in this chapter shall preclude a county from rejecting a proposed plan because it is in conflict with the criteria in RCW 57.02.040. Each general comprehensive plan shall be deemed approved if the county legislative authority fails to reject or conditionally approve the plan within ninety days of the plan's submission to the county legislative authority or within thirty days of a hearing on the plan when the hearing is held within ninety days of submission to the county legislative authority. However, a county legislative authority may extend this ninety-day time limitation by up to an additional ninety days where a finding is made that ninety days is insufficient to review adequately the general comprehensive plan. In addition, the water commissioners and the county legislative authority may mutually agree to an extension of the deadlines in this section.

If the district includes portions or all of one or more cities or towns, the general comprehensive plan shall be submitted also to, and approved by resolution of, the governing bodies of such cities and towns before becoming effective. The general comprehensive plan shall be deemed approved by the city or town governing body if the city or town governing body fails to reject or conditionally approve the plan within ninety days of the plan's submission to the city or town or within thirty days of a hearing on the plan when the hearing is held within ninety days of submission to the county legislative authority. However, a city or town governing body may extend this time limitation by up to an additional ninety days where a finding is made that insufficient time exists to adequately review the general comprehensive plan within these time limitations. In addition, the sewer [water] commissioners and the city or town governing body may mutually agree to an extension of the deadlines in this section.

Before becoming effective, any amendment to, alteration of, or addition to, a general comprehensive plan shall also be subject to such approval as if it were a new general comprehensive plan: PROVIDED, That only if the amendment, alteration, or addition affects a particular city or town, shall the amendment, alteration or addition be subject to approval by such particular city or town governing body. [1990 1st ex.s. c 17 § 35; 1989 c 389 § 10; 1982 c 213 § 2; 1979 c 23 § 2; 1977 ex.s. c 299 § 3; 1959 c 108 § 6; 1959 c 18 § 6. Prior: 1939 c 128 § 2, part; 1937 c 177 § 1; 1929 c 114 § 10, part; RRS § 11588. Cf. 1913 c 161 § 10.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

57.16.060 Resolution or petition to form district—Procedure—Written protest—Notice—Appeal—Improvement ordered—Divestment of power

to order. Local improvement districts or utility local improvement districts to carry out the whole or any portion of the general comprehensive plan of improvements or plan providing for additions and betterments to the original general comprehensive plan previously adopted may be initiated either by resolution of the board of water commissioners or by petition signed by the owners according to the records of the office of the applicable county auditor of at least fifty-one percent of the area of the land within the limits of the local improvement district to be created.

In case the board of water commissioners desires to initiate the formation of a local improvement district or a utility local improvement district by resolution, it shall first pass a resolution declaring its intention to order such improvement, setting forth the nature and territorial extent of such proposed improvement, designating the number of the proposed local improvement district or utility local improvement district, and describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed district, and fixing a date, time, and place for a public hearing on the formation of the proposed local district.

In case any such local improvement district or utility local improvement district is initiated by petition, such petition shall set forth the nature and territorial extent of the proposed improvement requested to be ordered and the fact that the signers thereof are the owners according to the records of the applicable county auditor of at least fifty-one percent of the area of land within the limits of the local improvement district or utility local improvement district to be created. Upon the filing of such petition the board shall determine whether the petition is sufficient, and the board's determination thereof shall be conclusive upon all persons. No person may withdraw his or her name from the petition after it has been filed with the board of water commissioners. If the board finds the petition to be sufficient, it shall proceed to adopt a resolution declaring its intention to order the improvement petitioned for, setting forth the nature and territorial extent of the improvement, designating the number of the proposed local district and describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed local district, and fixing a date, time, and place for a public hearing on the formation of the proposed local district.

Notice of the adoption of the resolution of intention, whether the resolution was adopted on the initiative of the board or pursuant to a petition of the property owners, shall be published in at least two consecutive issues of a newspaper of general circulation in the proposed local district, the date of the first publication to be at least fifteen days prior to the date fixed by such resolution for hearing before the board of water commissioners. Notice of the adoption of the resolution of intention shall also be given each owner or reputed owner of any lot, tract, parcel of land, or other property within the proposed

improvement district by mailing the notice at least fifteen days before the date fixed for the public hearing to the owner or reputed owner of the property as shown on the tax rolls of the county treasurer of the county in which the real property is located at the address shown thereon. Whenever such notices are mailed, the water commissioners shall maintain a list of such reputed property owners, which list shall be kept on file at a location within the water district and shall be made available for public perusal. The notices shall refer to the resolution of intention and designate the proposed improvement district by number. The notices shall also set forth the nature of the proposed improvement, the total estimated cost, the proportion of total cost to be borne by assessments, the date, time, and place of the hearing before the board of water commissioners. In the case of improvements initiated by resolution, the notice shall also: (1) State that all persons desiring to object to the formation of the proposed district must file their written protests with the secretary of the board of water commissioners no later than ten days after the public hearing; (2) state that if owners of at least forty percent of the area of land within the proposed district file written protests with the secretary of the board, the power of the water commissioners to proceed with the creation of the proposed district shall be divested; (3) provide the name and address of the secretary of the board; and (4) state the hours and location within the water district where the names of the property owners within the proposed district are kept available for public perusal. In the case of the notice given each owner or reputed owner by mail, the notice shall set forth the estimated amount of the cost and expense of such improvement to be borne by the particular lot, tract, parcel of land, or other property.

Whether the improvement is initiated by petition or resolution, the board shall conduct a public hearing at the time and place designated in the notice to property owners. At this hearing the board shall hear objections from any person affected by the formation of the local district and may make such changes in the boundaries of the district or such modifications in the plans for the proposed improvement as shall be deemed necessary. The board may not change the boundaries of the district to include property not previously included in it without first passing a new resolution of intention and giving a new notice to property owners in the manner and form and within the time provided in this chapter for the original notice.

After the hearing and the expiration of the ten-day period for filing written protests, the commissioners shall have jurisdiction to overrule protests and proceed with any such improvement initiated by petition or resolution. The jurisdiction of the commissioners to proceed with any improvement initiated by resolution shall be divested by protests filed with the secretary of the board no later than ten days after the hearing, signed by the owners, according to the records of the applicable county auditor, of at least forty percent of the area of land within the proposed local district.

If the commissioners find that the district should be formed, they shall by resolution form the district and order the improvement. After execution of the resolution forming the district, the secretary of the board of commissioners shall publish, in a legal publication that serves the area subject to the district, a notice setting forth that a resolution has been passed forming the district and that a lawsuit challenging the jurisdiction or authority of the water district to proceed with the improvement and creating the district must be filed, and notice to the water district served, within thirty days of the publication of the notice. The notice shall set forth the nature of the appeal. Property owners bringing the appeal shall follow the procedures as set forth under appeal under RCW 57.16.090. Whenever a resolution forming a district has been adopted, the formation is conclusive in all things upon all parties, and cannot be contested or questioned in any manner in any proceeding whatsoever by any person not commencing a lawsuit in the manner and within the time provided in this section, except for lawsuits made under RCW 57.16.090.

Following an appeal, if it is unsuccessful or if no appeal is made under RCW 57.16.090, the commissioners may proceed with the improvement and provide the general funds of the water district to be applied thereto, adopt detailed plans of the local improvement district or utility local improvement district and declare the estimated cost thereof, acquire all necessary land therefor, pay all damages caused thereby, and commence in the name of the water district such eminent domain proceedings as may be necessary to entitle the district to proceed with the work. The board shall thereupon proceed with the work and file with the county treasurer of the county in which the real property is located its roll levying special assessments in the amount to be paid by special assessment against the property situated within the improvement district in proportion to the special benefits to be derived by the property therein from the improvement. [1991 c 190 § 7; 1986 c 256 § 3; 1982 1st ex.s. c 17 § 16; 1977 ex.s. c 299 § 7; 1965 ex.s. c 39 § 1; 1959 c 18 § 11. Prior: 1953 c 251 § 14; 1929 c 114 § 12, part; RRS § 11590, part. Cf. 1913 c 161 § 12, part.]

57.16.090 Review. The decision of the water district commission upon any objections made within the time and in the manner herein prescribed, may be reviewed by the superior court upon an appeal thereto taken in the following manner. Such appeal shall be made by filing written notice of appeal with the secretary of said water district commission and with the clerk of the superior court in the county in which the real property is situated within ten days after publication of a notice that the resolution confirming such assessment roll has been adopted, and such notice of appeal shall describe the property and set forth the objections of such appellant to such assessment; and within ten days from the filing of such notice of appeal with the clerk of the superior court, the appellant shall file with the clerk of the court,

a transcript consisting of the assessment roll and the appellant's objections thereto, together with the resolution confirming such assessment roll and the record of the water district commission with reference to the assessment, which transcript, upon payment of the necessary fees therefor, shall be furnished by the secretary of the water district commission certified by the secretary to contain full, true and correct copies of all matters and proceedings required to be included in such transcript. Such fees shall be the same as the fees payable to the county clerk for the preparation and certification of transcripts on appeal to the supreme court or the court of appeals in civil actions. At the time of the filing of the notice of appeal with the clerk of the superior court a sufficient bond in the penal sum of two hundred dollars, with at least two sureties, to be approved by the judge of said court, conditioned to prosecute such appeal without delay, and if unsuccessful to pay all costs to which the water district is put by reason of such appeal. The court may order the appellant upon application therefor, to execute and file such additional bond or bonds as the necessity of the case may require. Within three days after such transcript is filed in the superior court, the appellant shall give written notice to the secretary of such water district, that such transcript is filed. The notice shall state a time, not less than three days from the service thereof, when the appellant will call up the cause for hearing; and the superior court shall, at said time or at such further time as may be fixed by order of the court, hear and determine such appeal without a jury; and such cause shall have preference over all civil causes pending in the court, except proceedings under an act relating to eminent domain and actions of forcible entry and detainer. The judgment of the court shall confirm, unless the court shall find from the evidence that such assessment is either founded upon the fundamentally wrong basis or a decision of the council or other legislative body thereon was arbitrary or capricious, or both; in which event the judgment of the court shall correct, modify or annul the assessment insofar as the same affects the property of the appellant. A certified copy of the decision of the court shall be filed with the officer who shall have custody of the assessment roll, who shall modify and correct such assessment roll in accordance with such decision. Appellate review of the judgment of the superior court may be sought as in other civil cases. However, the review must be sought within fifteen days after the date of the entry of the judgment of such superior court. A certified copy of the order of the supreme court or the court of appeals upon such appeal shall be filed with the officer having custody of such assessment roll, who shall thereupon modify and correct such assessment roll in accordance with such decision. [1991 c 190 § 8; 1988 c 202 § 53; 1982 1st ex.s. c 17 § 18; 1971 c 81 § 126; 1965 ex.s. c 39 § 2; 1929 c 114 § 13; RRS § 11591. Cf. 1913 c 161 § 13.]

Rules of court: Cf. RAP 5.2, 18.22.

Severability—1988 c 202: See note following RCW 2.24.050.

Chapter 57.20
FINANCES

Sections

57.20.020 Revenue bonds—Special fund—Classification of service—Adequate rates and charges to be fixed.

57.20.020 Revenue bonds—Special fund—Classification of service—Adequate rates and charges to be fixed. (1) Whenever any issue or issues of water revenue bonds have been authorized in compliance with the provisions of RCW 57.16.010 through 57.16.040, said bonds shall be in bearer form or registered as to principal or interest or both, as provided in RCW 39.46.030, and may provide for conversion between registered and coupon bonds; shall be in such denominations, shall be numbered, shall bear such date, and shall be payable at such time or times up to a maximum period of not to exceed thirty years as shall be determined by the board of water commissioners of the district; shall bear interest at such rate or rates payable at such time or times as authorized by the board; shall be payable at the office of the county treasurer of the county in which the water district is located and may also be payable at such other place or places as the board of water commissioners may determine; shall be executed by the president of the board of water commissioners and attested and sealed by the secretary thereof, one of which signatures may, with the written permission of the signator whose facsimile signature is being used, be a facsimile; and may have facsimile signatures of said president or secretary imprinted on any interest coupons in lieu of original signatures.

The water district commissioners shall have power and are required to create a special fund or funds for the sole purpose of paying the interest and principal of such bonds into which special fund or funds the said water district commissioners shall obligate and bind the water district to set aside and pay a fixed proportion of the gross revenues of the water supply system or any fixed amount out of and not exceeding a fixed proportion of such revenues, or a fixed amount or amounts without regard to any fixed proportion and such bonds and the interest thereof shall be payable only out of such special fund or funds, but shall be a lien and charge against all revenues and payments received from any utility local improvement district or districts pledged to secure such bonds, subject only to operating and maintenance expenses.

In creating any such special fund or funds the water district commissioners of such water district shall have due regard to the cost of operation and maintenance of the plant or system as constructed or added to and to any proportion or part of the revenue previously pledged as a fund for the payment of bonds, warrants or other indebtedness, and shall not set aside into such special fund a greater amount or proportion of the revenue and proceeds than in their judgment will be available over and above such cost of maintenance and operation and

the amount or proportion, if any, of the revenue so previously pledged. Any such bonds and interest thereon issued against any such fund as herein provided shall be a valid claim of the owner thereof only as against the said special fund and its fixed proportion or amount of the revenue pledged to such fund, and shall not constitute an indebtedness of such water district within the meaning of the constitutional provisions and limitations. Each such bond shall state upon its face that it is payable from a special fund, naming the said fund and the resolution creating it. Said bonds shall be sold in such manner, at such price and at such rate or rates of interest as the water district commissioners shall deem for the best interests of the water district, either at public or private sale, and the said commissioners may provide in any contract for the construction and acquirement of the proposed improvement (and for the refunding of outstanding local improvement district obligations, if any) that payment therefor shall be made in such bonds at par value thereof.

When any such special fund shall have been heretofore or shall be hereafter created and any such bonds shall have been heretofore or shall hereafter be issued against the same a fixed proportion or a fixed amount out of and not to exceed such fixed proportion, or a fixed amount or amounts without regard to any fixed proportion, of revenue shall be set aside and paid into said special fund as provided in the resolution creating such fund or authorizing such bonds, and in case any water district shall fail thus to set aside and pay said fixed proportion or amount as aforesaid, the owner of any bond payable from such special fund may bring suit or action against the water district and compel such setting aside and payment.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW.

(3) The water district commissioners of any water district, in the event that such water revenue bonds are issued, shall provide for revenues by fixing rates and charges for the furnishing of water supply to those receiving such service, such rates and charges to be fixed as deemed necessary by such water district commissioners, so that uniform charges will be made for the same class of customer or service.

In classifying customers served or service furnished by such water supply system, the board of water commissioners may in its discretion consider any or all of the following factors: The difference in cost of service to the various customers; the location of the various customers within and without the district; the difference in cost of maintenance, operation, repair and replacement of the various parts of the system; the different character of the service furnished various customers; the quantity and quality of the water furnished; the time of its use; the achievement of water conservation goals and the discouragement of wasteful practices; capital contributions made to the system including but not limited to assessments; and any other matters which present a reasonable difference as a ground for distinction. Such rates shall be made on a monthly basis as may be deemed proper

by such commissioners and as fixed by resolution and shall produce revenues sufficient to take care of the costs of maintenance and operation, revenue bond and warrant interest and principal amortization requirements and all other charges necessary for efficient and proper operation of the system. [1991 c 347 § 20; 1983 c 167 § 164; 1975 1st ex.s. c 25 § 3; 1970 ex.s. c 56 § 84; 1969 ex.s. c 232 § 88; 1959 c 108 § 11; 1939 c 128 § 3; RRS § 11588-1.]

Purposes—1991 c 347: See note following RCW 90.42.005.

Severability—1991 c 347: See RCW 90.42.900.

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

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

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

Authority to adjust or delay rates or charges for poor persons: RCW 57.08.014.

Chapter 57.24

ANNEXATION OF TERRITORY

Sections

- 57.24.010 Annexation authorized—Petition—Notice of hearing.
- 57.24.190 Annexation of certain unincorporated territory—Referendum authorized—Petition—Election—Effective date of annexation.

57.24.010 Annexation authorized—Petition—Notice of hearing. Territory within the county or counties in which a district is located, or territory adjoining or in close proximity to a district but which is located in another county, may be annexed to and become a part of the district. All annexations shall be accomplished in the following manner: Ten percent of the number of registered voters residing in the territory proposed to be annexed who voted in the last general municipal election may file a petition with the district commissioners and cause the question to be submitted to the voters of the territory whether such territory will be annexed and become a part of the district. If the commissioners concur in the petition, they shall file it with the county auditor of each county in which the real property proposed to be annexed is located, who shall, within ten days, examine and validate the signatures thereon and certify to the sufficiency or insufficiency thereof; and for such purpose the county auditor shall have access to all registration books in the possession of the officers of any city or town in the proposed district. If the petition contains a sufficient number of signatures, the county auditor of the county in which the real property proposed to be annexed is located shall transmit it, together with a certificate of sufficiency attached thereto to the water commissioners of the district. If there are no registered voters residing in the territory to be annexed, the petition may be signed by such a number as appear of record to own at least a majority of the acreage in the territory, and the petition shall disclose the total number of acres of land in the territory and the names of all record owners of land therein. If the commissioners are satisfied as to the sufficiency of the petition and concur

therein, they shall send it, together with their certificate of concurrence attached thereto to the county legislative authority of each county in which the territory proposed to be annexed is located.

The county legislative authority, upon receipt of a petition certified to contain a sufficient number of signatures of registered voters, or upon receipt of a petition signed by such a number as own at least a majority of the acreage, together with a certificate of concurrence signed by the water commissioners, at a regular or special meeting shall cause to be published once a week for at least two weeks in a newspaper in general circulation throughout the territory proposed to be annexed a notice that the petition has been filed, stating the time of the meeting at which it shall be presented, and setting forth the boundaries of the territory proposed to be annexed. [1990 c 259 § 31; 1989 c 308 § 4; 1988 c 162 § 14; 1982 1st ex.s. c 17 § 21; 1959 c 18 § 15. Prior: 1951 2nd ex.s. c 25 § 5; 1931 c 72 § 5, part; 1929 c 114 § 15, part; RRS § 11593, part. Cf. 1913 c 161 § 15, part.]

57.24.190 Annexation of certain unincorporated territory—Referendum authorized—Petition—Election—Effective date of annexation. Such annexation resolution under RCW 57.24.180 shall be subject to referendum for forty-five days after the passage thereof. Upon the filing of a timely and sufficient referendum petition with the board of commissioners, signed by registered voters in number equal to not less than ten percent of the registered voters in the area to be annexed who voted in the last general municipal election, the question of annexation shall be submitted to the voters of such area in a general election if one is to be held within ninety days or at a special election called for that purpose by the board of commissioners in accordance with RCW 29.13.010 and 29.13.020. Notice of such election shall be given under RCW 57.24.020 and the election shall be conducted under RCW 57.24.040. The annexation shall be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition thereto.

After the expiration of the forty-fifth day from but excluding the date of passage of the annexation resolution, if no timely and sufficient referendum petition has been filed, the area annexed shall become a part of the water district upon the date fixed in the resolution of annexation upon transmitting the resolution to the county legislative authority. [1990 c 259 § 32; 1982 c 146 § 6.]

Chapter 57.90

DISINCORPORATION OF WATER AND OTHER DISTRICTS IN CLASS A OR AA COUNTIES

Sections

- 57.90.010 Disincorporation authorized.

57.90.010 Disincorporation authorized. Water, sewer, park and recreation, metropolitan park, county rural library, cemetery, flood control, mosquito control,

diking and drainage, irrigation or reclamation, weed, health, or fire protection districts, and any air pollution control authority, hereinafter referred to as "special districts", which are located wholly or in part within a county with a population of two hundred ten thousand or more may be disincorporated when the district has not actively carried out any of the special purposes or functions for which it was formed within the preceding consecutive five year period. [1991 c 363 § 137; 1979 ex.s. c 30 § 11; 1963 c 55 § 1.]

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

Title 58 BOUNDARIES AND PLATS

Chapters

- 58.08** Plats—Recording.
58.17 Plats—Subdivisions—Dedications.
58.24 State agency for surveys and maps—Fees.

Chapter 58.08 PLATS—RECORDING

Sections

- 58.08.040** Deposit to cover anticipated taxes.

58.08.040 Deposit to cover anticipated taxes. Any person filing a plat, replat, altered plat, or binding site plan subsequent to May 31st in any year and prior to the date of the collection of taxes, shall deposit with the county treasurer a sum equal to the product of the county assessor's latest valuation on the unimproved property in such subdivision multiplied by the current year's dollar rate increased by twenty-five percent on the property platted. The treasurer's receipt shall be evidence of the payment. The treasurer shall appropriate so much of the deposit as will pay the taxes on the property when the tax rolls are certified by the assessor for collection, and in case the sum deposited is in excess of the amount necessary for the payment of the taxes, the treasurer shall return, to the party depositing, the amount of excess. [1991 c 245 § 14; 1989 c 378 § 2; 1973 1st ex.s. c 195 § 74; 1969 ex.s. c 271 § 34; 1963 c 66 § 1; 1909 c 200 § 1; 1907 c 44 § 1; 1893 c 129 § 2; RRS § 9291.]

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

Severability—1969 ex.s. c 271: See RCW 58.17.910.

Assessment date: RCW 84.40.020.

Property taxes—Collection of taxes: Chapter 84.56 RCW.

Chapter 58.17 PLATS—SUBDIVISIONS—DEDICATIONS

Sections

- 58.17.060** Short plats and short subdivisions—Summary approval—Regulations—Requirements.

- 58.17.110** Approval or disapproval of subdivision and dedication—Factors to be considered—Conditions for approval—Finding—Release from damages.
58.17.218 Alteration of subdivision—Easements by dedication.
58.17.310 Approval of plat within irrigation district without provision for irrigation prohibited.

58.17.060 Short plats and short subdivisions—Summary approval—Regulations—Requirements.

(1) The legislative body of a city, town, or county shall adopt regulations and procedures, and appoint administrative personnel for the summary approval of short plats and short subdivisions or alteration or vacation thereof. When an alteration or vacation involves a public dedication, the alteration or vacation shall be processed as provided in RCW 58.17.212 or 58.17.215. Such regulations shall be adopted by ordinance and shall provide that a short plat and short subdivision may be approved only if written findings that are appropriate, as provided in RCW 58.17.110, are made by the administrative personnel, and may contain wholly different requirements than those governing the approval of preliminary and final plats of subdivisions and may require surveys and monumentations and shall require filing of a short plat, or alteration or vacation thereof, for record in the office of the county auditor: PROVIDED, That such regulations must contain a requirement that land in short subdivisions may not be further divided in any manner within a period of five years without the filing of a final plat, except that when the short plat contains fewer than four parcels, nothing in this section shall prevent the owner who filed the short plat from filing an alteration within the five-year period to create up to a total of four lots within the original short plat boundaries: PROVIDED FURTHER, That such regulations are not required to contain a penalty clause as provided in RCW 36.32.120 and may provide for wholly injunctive relief.

An ordinance requiring a survey shall require that the survey be completed and filed with the application for approval of the short subdivision.

(2) Cities, towns, and counties shall include in their short plat regulations and procedures pursuant to subsection (1) of this section provisions for considering sidewalks and other planning features that assure safe walking conditions for students who walk to and from school. [1990 1st ex.s. c 17 § 51; 1989 c 330 § 2; 1987 c 354 § 5; 1987 c 92 § 1; 1974 ex.s. c 134 § 3; 1969 ex.s. c 271 § 6.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

58.17.110 Approval or disapproval of subdivision and dedication—Factors to be considered—Conditions for approval—Finding—Release from damages. (1) The city, town, or county legislative body shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. It shall determine: (a) If appropriate provisions are made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation,

playgrounds, schools and schoolgrounds, and shall consider all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) whether the public interest will be served by the subdivision and dedication.

(2) A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication. If it finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the legislative body shall approve the proposed subdivision and dedication. Dedication of land to any public body, provision of public improvements to serve the subdivision, and/or impact fees imposed under RCW 82.02.050 through 82.02.090 may be required as a condition of subdivision approval. Dedications shall be clearly shown on the final plat. No dedication, provision of public improvements, or impact fees imposed under RCW 82.02.050 through 82.02.090 shall be allowed that constitutes an unconstitutional taking of private property. The legislative body shall not as a condition to the approval of any subdivision require a release from damages to be procured from other property owners. [1990 1st ex.s. c 17 § 52; 1989 c 330 § 3; 1974 ex.s. c 134 § 5; 1969 ex.s. c 271 § 11.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

58.17.218 Alteration of subdivision—Easements by dedication. The alteration of a subdivision is subject to RCW 64.04.175. [1991 c 132 § 2.]

58.17.310 Approval of plat within irrigation district without provision for irrigation prohibited. In addition to any other requirements imposed by the provisions of this chapter, the legislative authority of any city, town, or county shall not approve a short plat or final plat, as defined in RCW 58.17.020, for any subdivision, short subdivision, lot, tract, parcel, or site which lies in whole or in part in an irrigation district organized pursuant to chapter 87.03 RCW unless there has been provided an irrigation water right of way for each parcel of land in such district. In addition, if the subdivision, short subdivision, lot, tract, parcel, or site lies within land within the district classified as irrigable, completed irrigation water distribution facilities for such land may be required by the irrigation district by resolution, bylaw, or rule of general applicability as a condition for approval of the short plat or final plat by the legislative authority

of the city, town, or county. Rights of way shall be evidenced by the respective plats submitted for final approval to the appropriate legislative authority. In addition, if the subdivision, short subdivision, lot, tract, parcel, or site to be platted is wholly or partially within an irrigation district of two hundred thousand acres or more and has been previously platted by the United States bureau of reclamation as a farm unit in the district, the legislative authority shall not approve for such land a short plat or final plat as defined in RCW 58.17.020 without the approval of the irrigation district and the administrator or manager of the project of the bureau of reclamation, or its successor agency, within which that district lies. Compliance with the requirements of this section together with all other applicable provisions of this chapter shall be a prerequisite, within the expressed purpose of this chapter, to any sale, lease, or development of land in this state. [1990 c 194 § 1; 1986 c 39 § 1; 1985 c 160 § 1; 1973 c 150 § 2.]

Chapter 58.24

STATE AGENCY FOR SURVEYS AND MAPS— FEES

Sections
58.24.060 Surveys and maps account—Purposes.

58.24.060 Surveys and maps account—Purposes. There is created in the state treasury the surveys and maps account which shall be a separate account consisting of funds received or collected under chapters 58.22 and 58.24 RCW, moneys appropriated to it by law. This account shall be used exclusively by the department of natural resources for carrying out the purposes and provisions of chapters 58.22 and 58.24 RCW. Appropriations from the account shall be expended for no other purposes. [1991 1st sp.s. c 13 § 14; 1987 c 466 § 8; 1985 c 57 § 65; 1983 c 272 § 1; 1982 c 165 § 6.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Effective date—1985 c 57: See note following RCW 15.52.320.

Title 59

LANDLORD AND TENANT

Chapters

59.18 Residential Landlord-Tenant Act.
59.20 Mobile Home Landlord-Tenant Act.
59.21 Mobile home relocation assistance.
59.22 Office of mobile home affairs—Resident-owned mobile home parks.

Chapter 59.18

RESIDENTIAL LANDLORD-TENANT ACT

Sections
59.18.060 Landlord—Duties.
59.18.130 Duties of tenant.

- 59.18.253 Deposit to secure occupancy by tenant—Landlord's duties—Violation.
- 59.18.257 Screening of tenants—Costs—Notice to tenant—Violation.
- 59.18.310 Default in rent—Abandonment—Liability of tenant—Landlord's remedies—Sale of tenant's property by landlord.
- 59.18.440 Relocation assistance for low-income tenants—Certain cities, towns, counties, municipal corporations authorized to require.
- 59.18.450 Relocation assistance for low-income tenants—Payments not considered income—Eligibility for other assistance not affected.

59.18.060 Landlord—Duties. The landlord will at all times during the tenancy keep the premises fit for human habitation, and shall in particular:

(1) Maintain the premises to substantially comply with any applicable code, statute, ordinance, or regulation governing their maintenance or operation, which the legislative body enacting the applicable code, statute, ordinance or regulation could enforce as to the premises rented if such condition substantially endangers or impairs the health or safety of the tenant;

(2) Maintain the roofs, floors, walls, chimneys, fireplaces, foundations, and all other structural components in reasonably good repair so as to be usable and capable of resisting any and all normal forces and loads to which they may be subjected;

(3) Keep any shared or common areas reasonably clean, sanitary, and safe from defects increasing the hazards of fire or accident;

(4) Provide a reasonable program for the control of infestation by insects, rodents, and other pests at the initiation of the tenancy and, except in the case of a single family residence, control infestation during tenancy except where such infestation is caused by the tenant;

(5) Except where the condition is attributable to normal wear and tear, make repairs and arrangements necessary to put and keep the premises in as good condition as it by law or rental agreement should have been, at the commencement of the tenancy;

(6) Provide reasonably adequate locks and furnish keys to the tenant;

(7) Maintain all electrical, plumbing, heating, and other facilities and appliances supplied by him in reasonably good working order;

(8) Maintain the dwelling unit in reasonably weather-tight condition;

(9) Except in the case of a single family residence, provide and maintain appropriate receptacles in common areas for the removal of ashes, rubbish, and garbage, incidental to the occupancy and arrange for the reasonable and regular removal of such waste;

(10) Except where the building is not equipped for the purpose, provide facilities adequate to supply heat and water and hot water as reasonably required by the tenant;

(11) Provide a written notice to the tenant that the dwelling unit is equipped with a smoke detection device as required in RCW 48.48.140. The notice shall inform the tenant of the tenant's responsibility to maintain the smoke detection device in proper operating condition and of penalties for failure to comply with the provisions of

RCW 48.48.140(3). The notice must be signed by the landlord or the landlord's authorized agent and tenant with copies provided to both parties.

(12) Designate to the tenant the name and address of the person who is the landlord by a statement on the rental agreement or by a notice conspicuously posted on the premises. The tenant shall be notified immediately of any changes by certified mail or by an updated posting. If the person designated in this section does not reside in the state where the premises are located, there shall also be designated a person who resides in the county who is authorized to act as an agent for the purposes of service of notices and process, and if no designation is made of a person to act as agent, then the person to whom rental payments are to be made shall be considered such agent.

No duty shall devolve upon the landlord to repair a defective condition under this section, nor shall any defense or remedy be available to the tenant under this chapter, where the defective condition complained of was caused by the conduct of such tenant, his family, invitee, or other person acting under his control, or where a tenant unreasonably fails to allow the landlord access to the property for purposes of repair. When the duty imposed by subsection (1) of this section is incompatible with and greater than the duty imposed by any other provisions of this section, the landlord's duty shall be determined pursuant to subsection (1) of this section. [1991 c 154 § 2; 1973 1st ex.s. c 207 § 6.]

59.18.130 Duties of tenant. Each tenant shall pay the rental amount at such times and in such amounts as provided for in the rental agreement or as otherwise provided by law and comply with all obligations imposed upon tenants by applicable provisions of all municipal, county, and state codes, statutes, ordinances, and regulations, and in addition shall:

(1) Keep that part of the premises which he occupies and uses as clean and sanitary as the conditions of the premises permit;

(2) Properly dispose from his dwelling unit all rubbish, garbage, and other organic or flammable waste, in a clean and sanitary manner at reasonable and regular intervals, and assume all costs of extermination and fumigation for infestation caused by the tenant;

(3) Properly use and operate all electrical, gas, heating, plumbing and other fixtures and appliances supplied by the landlord;

(4) Not intentionally or negligently destroy, deface, damage, impair, or remove any part of the structure or dwelling, with the appurtenances thereto, including the facilities, equipment, furniture, furnishings, and appliances, or permit any member of his family, invitee, licensee, or any person acting under his control to do so. Violations may be prosecuted under chapter 9A.48 RCW if the destruction is intentional and malicious;

(5) Not permit a nuisance or common waste;

(6) Not engage in drug-related activity at the rental premises, or allow a subtenant, sublessee, resident, or anyone else to engage in drug-related activity at the rental premises with the knowledge or consent of the tenant. "Drug-related activity" means that activity

which constitutes a violation of chapter 69.41, 69.50, or 69.52 RCW;

(7) Maintain the smoke detection device in accordance with the manufacturer's recommendations, including the replacement of batteries where required for the proper operation of the smoke detection device, as required in RCW 48.48.140(3); and

(8) Upon termination and vacation, restore the premises to their initial condition except for reasonable wear and tear or conditions caused by failure of the landlord to comply with his obligations under this chapter: **PROVIDED**, That the tenant shall not be charged for normal cleaning if he has paid a nonrefundable cleaning fee. [1991 c 154 § 3; 1988 c 150 § 2; 1983 c 264 § 3; 1973 1st ex.s. c 207 § 13.]

Legislative findings—1988 c 150: "The legislature finds that the illegal use, sale, and manufacture of drugs and other drug-related activities is a state-wide problem. Innocent persons, especially children, who come into contact with illegal drug-related activity within their own neighborhoods are seriously and adversely affected. Rental property is damaged and devalued by drug activities. The legislature further finds that a rapid and efficient response is necessary to: (1) Lessen the occurrence of drug-related enterprises; (2) reduce the drug use and trafficking problems within this state; and (3) reduce the damage caused to persons and property by drug activity. The legislature finds that it is beneficial to rental property owners and to the public to permit landlords to quickly and efficiently evict persons who engage in drug-related activities at rented premises." [1988 c 150 § 1.]

Severability—1988 c 150: "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." [1988 c 150 § 15.]

59.18.253 Deposit to secure occupancy by tenant—Landlord's duties—Violation. (1) It shall be unlawful for a landlord to require a fee from a prospective tenant for the privilege of being placed on a waiting list to be considered as a tenant for a dwelling unit.

(2) A landlord who charges a prospective tenant a fee or deposit to secure that the prospective tenant will move into a dwelling unit, after the dwelling unit has been offered to the prospective tenant, must provide the prospective tenant with a receipt for the fee or deposit, together with a written statement of the conditions, if any, under which the fee or deposit is refundable. If the prospective tenant does occupy the dwelling unit, then the landlord must credit the amount of the fee or deposit to the tenant's first month's rent or to the tenant's security deposit. If the prospective tenant does not occupy the dwelling unit, then the landlord may keep up to the full amount of any fee or deposit that was paid by the prospective tenant to secure the tenancy, so long as it is in accordance with the written statement of conditions furnished to the prospective tenant at the time the fee or deposit was charged. A fee charged to secure a tenancy under this subsection does not include any cost charged by a landlord to use a tenant screening service or obtain background information on a prospective tenant.

(3) In any action brought for a violation of this section a landlord may be liable for the amount of the fee or deposit charged. In addition, any landlord who violates this section may be liable to the prospective tenant for an amount not to exceed one hundred dollars. The

prevailing party may also recover court costs and a reasonable attorneys' fee. [1991 c 194 § 2.]

Findings—1991 c 194: "The legislature finds that tenant application fees often have the effect of excluding low-income people from applying for housing because many low-income people cannot afford these fees in addition to the rent and other deposits which may be required. The legislature further finds that application fees are frequently not returned to unsuccessful applicants for housing, which creates a hardship on low-income people. The legislature therefore finds and declares that it is the policy of the state that certain tenant application fees should be prohibited and guidelines should be established for the imposition of other tenant application fees.

The legislature also finds that it is important to both landlords and tenants that consumer information concerning prospective tenants is accurate. Many tenants are unaware of their rights under federal fair credit reporting laws to dispute information that may be inaccurate. The legislature therefore finds and declares that it is the policy of the state for prospective tenants to be informed of their rights to dispute information they feel is inaccurate in order to help prevent denials of housing based upon incorrect information." [1991 c 194 § 1.]

59.18.257 Screening of tenants—Costs—Notice to tenant—Violation. (1) If a landlord uses a tenant screening service, then the landlord may only charge for the costs incurred for using the tenant screening service under this section. If a landlord conducts his or her own screening of tenants, then the landlord may charge his or her actual costs in obtaining the background information, but the amount may not exceed the customary costs charged by a screening service in the general area. The landlord's actual costs include costs incurred for long distance phone calls and for time spent calling landlords, employers, and financial institutions.

(2) A landlord may not charge a prospective tenant for the cost of obtaining background information under this section unless the landlord first notifies the prospective tenant in writing of what a tenant screening entails, the prospective tenant's rights to dispute the accuracy of information provided by the tenant screening service or provided by the entities listed on the tenant application who will be contacted for information concerning the tenant, and the name and address of the tenant screening service used by the landlord.

(3) Nothing in this section requires a landlord to disclose information to a prospective tenant that was obtained from a tenant screening service or from entities listed on the tenant application which is not required under the federal fair credit reporting act, 15 U.S.C. Sec. 1681 et seq.

(4) Any landlord who violates this section may be liable to the prospective tenant for an amount not to exceed one hundred dollars. The prevailing party may also recover court costs and reasonable attorneys' fees. [1991 c 194 § 3.]

Findings—1991 c 194: See note following RCW 59.18.253.

59.18.310 Default in rent—Abandonment—Liability of tenant—Landlord's remedies—Sale of tenant's property by landlord. If the tenant defaults in the payment of rent and reasonably indicates by words or actions the intention not to resume tenancy, the tenant shall be liable for the following for such abandonment: **PROVIDED**, That upon learning of such abandonment of the premises the landlord shall make a

reasonable effort to mitigate the damages resulting from such abandonment:

(1) When the tenancy is month-to-month, the tenant shall be liable for the rent for the thirty days following either the date the landlord learns of the abandonment, or the date the next regular rental payment would have become due, whichever first occurs.

(2) When the tenancy is for a term greater than month-to-month, the tenant shall be liable for the lesser of the following:

(a) The entire rent due for the remainder of the term; or

(b) All rent accrued during the period reasonably necessary to rerent the premises at a fair rental, plus the difference between such fair rental and the rent agreed to in the prior agreement, plus actual costs incurred by the landlord in rerenting the premises together with statutory court costs and reasonable attorney's fees.

In the event of such abandonment of tenancy and an accompanying default in the payment of rent by the tenant, the landlord may immediately enter and take possession of any property of the tenant found on the premises and may store the same in any reasonably secure place. A landlord shall make reasonable efforts to provide the tenant with a notice containing the name and address of the landlord and the place where the property is stored and informing the tenant that a sale or disposition of the property shall take place pursuant to this section, and the date of the sale or disposal, and further informing the tenant of the right under RCW 59.18.230 to have the property returned prior to its sale or disposal. The landlord's efforts at notice under this subsection shall be satisfied by the mailing by first class mail, postage prepaid, of such notice to the tenant's last known address and to any other address provided in writing by the tenant or actually known to the landlord where the tenant might receive the notice. The landlord shall return the property to the tenant after the tenant has paid the actual or reasonable drayage and storage costs whichever is less if the tenant makes a written request for the return of the property before the landlord has sold or disposed of the property. After forty-five days from the date the notice of such sale or disposal is mailed or personally delivered to the tenant, the landlord may sell or dispose of such property, including personal papers, family pictures, and keepsakes. The landlord may apply any income derived therefrom against moneys due the landlord, including actual or reasonable costs whichever is less of drayage and storage of the property. If the property has a cumulative value of fifty dollars or less, the landlord may sell or dispose of the property in the manner provided in this section, except for personal papers, family pictures, and keepsakes, after seven days from the date the notice of sale or disposal is mailed or personally delivered to the tenant: PROVIDED, That the landlord shall make reasonable efforts, as defined in this section, to notify the tenant. Any excess income derived from the sale of such property under this section shall be held by the landlord for the benefit of the tenant for a period of one year from the date of sale, and if no claim is made or action commenced by the tenant for

the recovery thereof prior to the expiration of that period of time, the balance shall be the property of the landlord, including any interest paid on the income. [1991 c 220 § 1; 1989 c 342 § 10; 1983 c 264 § 8; 1973 1st ex.s. c 207 § 31.]

59.18.440 Relocation assistance for low-income tenants—Certain cities, towns, counties, municipal corporations authorized to require. (1) Any city, town, county, or municipal corporation that is required to develop a comprehensive plan under RCW 36.70A.040(1) is authorized to require, after reasonable notice to the public and a public hearing, property owners to provide their portion of reasonable relocation assistance to low-income tenants upon the demolition, substantial rehabilitation whether due to code enforcement or any other reason, or change of use of residential property, or upon the removal of use restrictions in an assisted-housing development. No city, town, county, or municipal corporation may require property owners to provide relocation assistance to low-income tenants, as defined in this chapter, upon the demolition, substantial rehabilitation, upon the change of use of residential property, or upon the removal of use restrictions in an assisted-housing development, except as expressly authorized herein or when authorized or required by state or federal law. As used in this section, "assisted housing development" means a multifamily rental housing development that either receives government assistance and is defined as federally assisted housing in RCW 59.28.020, or that receives other federal, state, or local government assistance and is subject to use restrictions.

(2) As used in this section, "low-income tenants" means tenants whose combined total income per dwelling unit is at or below fifty percent of the median income, adjusted for family size, in the county where the tenants reside.

The department of community development shall adopt rules defining county median income in accordance with the definitions promulgated by the federal department of housing and urban development.

(3) A requirement that property owners provide relocation assistance shall include the amounts of such assistance to be provided to low-income tenants. In determining such amounts, the jurisdiction imposing the requirement shall evaluate, and receive public testimony on, what relocation expenses displaced tenants would reasonably incur in that jurisdiction including:

(a) Actual physical moving costs and expenses;

(b) Advance payments required for moving into a new residence such as the cost of first and last month's rent and security and damage deposits;

(c) Utility connection fees and deposits; and

(d) Anticipated additional rent and utility costs in the residence for one year after relocation.

(4)(a) Relocation assistance provided to low-income tenants under this section shall not exceed two thousand dollars for each dwelling unit displaced by actions of the property owner under subsection (1) of this section. A city, town, county, or municipal corporation may make future annual adjustments to the maximum amount of

relocation assistance required under this subsection in order to reflect any changes in the housing component of the consumer price index as published by the United States department of labor, bureau of labor statistics.

(b) The property owner's portion of any relocation assistance provided to low-income tenants under this section shall not exceed one-half of the required relocation assistance under (a) of this subsection in cash or services.

(c) The portion of relocation assistance not covered by the property owner under (b) of this subsection shall be paid by the city, town, county, or municipal corporation authorized to require relocation assistance under subsection (1) of this section. The relocation assistance may be paid from proceeds collected from the excise tax imposed under RCW 82.46.010.

(5) A city, town, county, or municipal corporation requiring the provision of relocation assistance under this section shall adopt policies, procedures, or regulations to implement such requirement. Such policies, procedures, or regulations shall include provisions for administrative hearings to resolve disputes between tenants and property owners relating to relocation assistance or unlawful detainer actions during relocation, and shall require a decision within thirty days of a request for a hearing by either a tenant or property owner.

Judicial review of an administrative hearing decision relating to relocation assistance may be had by filing a petition, within ten days of the decision, in the superior court in the county where the residential property is located. Judicial review shall be confined to the record of the administrative hearing and the court may reverse the decision only if the administrative findings, inferences, conclusions, or decision is:

- (a) In violation of constitutional provisions;
 - (b) In excess of the authority or jurisdiction of the administrative hearing officer;
 - (c) Made upon unlawful procedure or otherwise is contrary to law; or
 - (d) Arbitrary and capricious.
- (6) Any city, town, county, or municipal corporation may require relocation assistance, under the terms of this section, for otherwise eligible tenants whose living arrangements are exempted from the provisions of this chapter under RCW 59.18.040(3) and if the living arrangement is considered to be a rental or lease pursuant to RCW 67.28.180(1).

(7)(a) Persons who move from a dwelling unit prior to the application by the owner of the dwelling unit for any governmental permit necessary for the demolition, substantial rehabilitation, or change of use of residential property or prior to any notification or filing required for condominium conversion shall not be entitled to the assistance authorized by this section.

(b) Persons who move into a dwelling unit after the application for any necessary governmental permit or after any required condominium conversion notification or filing shall not be entitled to the assistance authorized by this section if such persons receive written notice from the property owner prior to taking possession of the dwelling unit that specifically describes the activity or

condition that may result in their temporary or permanent displacement and advises them of their ineligibility for relocation assistance. [1990 1st ex.s. c 17 § 49.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

59.18.450 Relocation assistance for low-income tenants—Payments not considered income—Eligibility for other assistance not affected. Relocation assistance payments received by tenants under *RCW 59.18.440 shall not be considered as income or otherwise affect the eligibility for or amount of assistance paid under any government benefit program. [1990 1st ex.s. c 17 § 50.]

***Reviser's note:** The reference in 1990 1st ex.s. c 17 § 50 to "section 50 of this act" is apparently erroneous and has been translated to RCW 59.18.440, which was 1990 1st ex.s. c 17 § 49.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Chapter 59.20

MOBILE HOME LANDLORD-TENANT ACT

Sections	
59.20.060	Rental agreements—Required contents—Exclusions.
59.20.074	Rent—Liability of secured party taking possession of mobile home.

59.20.060 Rental agreements—Required contents—Exclusions. (1) Any mobile home space tenancy regardless of the term, shall be based upon a written rental agreement, signed by the parties, which shall contain:

- (a) The terms for the payment of rent, including time and place, and any additional charges to be paid by the tenant. Additional charges that occur less frequently than monthly shall be itemized in a billing to the tenant;
- (b) Reasonable rules for guest parking which shall be clearly stated;
- (c) The rules and regulations of the park;
- (d) The name and address of the person who is the landlord, and if such person does not reside in the state there shall also be designated by name and address a person who resides in the county where the mobile home park is located who is authorized to act as agent for the purposes of service of notices and process. If no designation is made of a person to act as agent, then the person to whom rental payments are to be made shall be considered the agent;
- (e) The name and address of any party who has a secured interest in the mobile home;
- (f) A forwarding address of the tenant or the name and address of a person who would likely know the whereabouts of the tenant in the event of an emergency or an abandonment of the mobile home;
- (g)(i) A covenant by the landlord that, except for acts or events beyond the control of the landlord, the mobile home park will not be converted to a land use that will prevent the space that is the subject of the lease from continuing to be used for its intended use for a period of

three years after the beginning of the term of the rental agreement;

(ii) A rental agreement may, in the alternative, contain a statement that the park may be sold or otherwise transferred at any time with the result that subsequent owners may close the mobile home park, or that the landlord may close the park at any time after the required notice. The covenant or statement required by this subsection must appear in print that is larger than the other text of the lease and must be set off by means of a box, blank space, or comparable visual device;

The requirements of this subsection shall apply to tenancies initiated after April 28, 1989.

(h) The terms and conditions under which any deposit or portion thereof may be withheld by the landlord upon termination of the rental agreement if any moneys are paid to the landlord by the tenant as a deposit or as security for performance of the tenant's obligations in a rental agreement;

(i) A listing of the utilities, services, and facilities which will be available to the tenant during the tenancy and the nature of the fees, if any, to be charged;

(j) A description of the boundaries of a mobile home space sufficient to inform the tenant of the exact location of the tenant's space in relation to other tenants' spaces;

(k) A statement of the current zoning of the land on which the mobile home park is located; and

(l) A statement of the expiration date of any conditional use, temporary use, or other land use permit subject to a fixed expiration date that is necessary for the continued use of the land as a mobile home park.

(2) Any rental agreement executed between the landlord and tenant shall not contain any provision:

(a) Which allows the landlord to charge a fee for guest parking unless a violation of the rules for guest parking occurs: PROVIDED, That a fee may be charged for guest parking which covers an extended period of time as defined in the rental agreement;

(b) Which authorizes the towing or impounding of a vehicle except upon notice to the owner thereof or the tenant whose guest is the owner of the vehicle;

(c) Which allows the landlord to alter the due date for rent payment or increase the rent: (i) During the term of the rental agreement if the term is less than one year, or (ii) more frequently than annually if the term is for one year or more: PROVIDED, That a rental agreement may include an escalation clause for a pro rata share of any increase in the mobile home park's real property taxes or utility assessments or charges, over the base taxes or utility assessments or charges of the year in which the rental agreement took effect, if the clause also provides for a pro rata reduction in rent or other charges in the event of a reduction in real property taxes or utility assessments or charges, below the base year: PROVIDED FURTHER, That a rental agreement for a term exceeding one year may provide for annual increases in rent in specified amounts or by a formula specified in such agreement;

(d) By which the tenant agrees to waive or forego rights or remedies under this chapter;

(e) Allowing the landlord to charge an "entrance fee" or an "exit fee";

(f) Which allows the landlord to charge a fee for guests: PROVIDED, That a landlord may establish rules charging for guests who remain on the premises for more than fifteen days in any sixty-day period;

(g) By which the tenant agrees to waive or forego homestead rights provided by chapter 6.13 RCW. This subsection shall not prohibit such waiver after a default in rent so long as such waiver is in writing signed by the husband and wife or by an unmarried claimant and in consideration of the landlord's agreement not to terminate the tenancy for a period of time specified in the waiver if the landlord would be otherwise entitled to terminate the tenancy under this chapter; or

(h) By which, at the time the rental agreement is entered into, the landlord and tenant agree to the selection of a particular arbitrator. [1990 c 174 § 1; 1990 c 169 § 1; 1989 c 201 § 9; 1984 c 58 § 1; 1981 c 304 § 18; 1979 ex.s. c 186 § 4; 1977 ex.s. c 279 § 6.]

Reviser's note: This section was amended by 1990 c 169 § 1 and by 1990 c 174 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1989 c 201: See RCW 59.21.900.

Severability—1984 c 58: See note following RCW 59.20.200.

Severability—1981 c 304: See note following RCW 26.16.030.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.074 Rent—Liability of secured party taking possession of mobile home. (1) A secured party who has a security interest in a mobile home that is located within a mobile home park and who has a right to possession of the mobile home under RCW 62A.9-503, shall be liable to the landlord from the date the secured party receives written notice by certified mail, return receipt requested, for rent for occupancy of the mobile home space under the same terms the tenant was paying prior to repossession, and any other reasonable expenses incurred after the receipt of the notice, until disposition of the mobile home under RCW 62A.9-504. The notice of default by a tenant must state the amount of rent and the amount and nature of any reasonable expenses that the secured party is liable for payment to the landlord. The notice must also state that the secured party will be provided a copy of the rental agreement previously signed by the tenant and the landlord upon request.

(2) This section shall not affect the availability of a landlord's lien as provided in chapter 60.72 RCW.

(3) As used in this section, "security interest" shall have the same meaning as this term is defined in RCW 62A.1-201, and "secured party" shall have the same meaning as this term is defined in RCW 62A.9-105.

(4) For purposes of this section, "reasonable expenses" means any routine maintenance and utility charges for which the tenant is liable under the rental agreement.

(5) Any rent or other reasonable expenses owed by the secured party to the landlord pursuant to this section shall be paid to the landlord prior to the removal of the mobile home from the mobile home park.

(6) If a secured party who has a secured interest in a mobile home that is located in a mobile home park becomes liable to the landlord pursuant to this section, then the relationship between the secured party and the landlord shall be governed by the rental agreement previously signed by the tenant and the landlord unless otherwise agreed, except that the term of the rental agreement shall convert to a month-to-month tenancy. No waiver is required to convert the rental agreement to a month-to-month tenancy. Either the landlord or the secured party may terminate the month-to-month tenancy upon giving written notice of thirty days or more. The secured party and the landlord are not required to execute a new rental agreement. Nothing in this section shall be construed to be a waiver of any rights by the tenant. [1990 c 169 § 2; 1985 c 78 § 1.]

Chapter 59.21

MOBILE HOME RELOCATION ASSISTANCE

Sections	
59.21.005	Declaration—Purpose.
59.21.010	Definitions.
59.21.020	Relocation assistance—Eligibility—Park-owners' duties—Restrictions.
59.21.030	Notice—Requirements.
59.21.035	Park-owner obligation—Purchasers.
59.21.050	Relocation fund—Creation—Administration—Tenant's application.
59.21.060	Relocation fund—Transfer fee—Revenue allocation—Expiration of section.
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59.21.085	Relocation fund—Waiver of park-owner contribution—Involuntary park closing.
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59.21.095	Relocation fund—Annual fee—Department of revenue—Rules.
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59.21.110	Violations—Penalty.
59.21.901	Construction—1991 c 327.
59.21.902	Severability—1991 c 327.
59.21.903	Effective date—1991 c 327.

59.21.005 Declaration—Purpose. The legislature recognizes that it is quite costly to move a mobile home. Many mobile home tenants need financial assistance in order to move their mobile homes from a mobile home park. The purpose of this chapter is to provide a mechanism for assisting mobile home tenants to relocate to suitable alternative sites when the mobile home park in which they reside is closed or converted to another use. [1991 c 327 § 8.]

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

(1) "Director" means the director of the department of community development.

(2) "Department" means the department of community development.

(3) "Fund" means the mobile home park relocation fund established under RCW 59.21.050 consisting of

park-owner fee payments under RCW 59.21.095 as well as park-owner payments when there are insufficient moneys in its fund.

(4) "Low-income" means at or below eighty percent of median household income as defined by the United States department of housing and urban development, for the county or standard metropolitan statistical area where the park is located.

(5) "Mobile home park" or "park" means real property that is rented or held out for rent to others for the placement of two or more mobile homes for the primary purpose of production of income, except where the real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy.

(6) "Landlord" or "park-owner" means the owner of the mobile home park that is being closed at the time relocation assistance is provided.

(7) "Relocate" means to remove the mobile home from the mobile home park being closed.

(8) "Relocation assistance" means the monetary assistance provided under RCW 59.21.020. [1991 c 327 § 10; 1990 c 171 § 1; 1989 c 201 § 1.]

59.21.020 Relocation assistance—Eligibility—Park-owners' duties—Restrictions. (1) If a mobile home park is closed or converted to another use, all low-income park tenants owning a mobile home are entitled to relocation assistance from the park-owner or the fund at the time the tenant relocates as follows: (a) For a single-wide mobile home, four thousand five hundred dollars; and (b) for a double-wide or larger mobile home, seven thousand five hundred dollars. The park-owner shall pay the actual relocation expenses, not to exceed two thousand dollars, for the relocation of recreational vehicles used as residences. The relocation assistance costs shall be adjusted annually by the housing component of the consumer price index for the Washington state area.

(2) When a tenant is forced to relocate before July 1, 1991, the payment of relocation assistance as provided by this section shall be paid by the park-owner. However, if the tenant has been given notice to vacate prior to April 1, 1989, and the tenant has not yet relocated as of April 28, 1989, the payment of relocation assistance by the park-owner shall be required only if the tenant is low income.

(3) When a tenant is forced to relocate after June 30, 1991, the payment of relocation assistance to low-income park tenants as provided in this section shall be made from the mobile home park relocation fund unless there are insufficient moneys in the fund.

(4) The park-owner shall be responsible for paying up to the full amount of relocation assistance to low-income park tenants if there are insufficient moneys in the fund until July 1, 1992. The department shall adopt rules governing disbursements of assistance from the fund and park-owner payments when there are insufficient moneys to meet the demand for relocation assistance.

(5) The tenant may recover court costs and a reasonable attorney's fee in any action brought to require the

park-owner to pay relocation assistance in which the tenant prevails.

(6) If the park-owner does not pay his or her portion of the relocation assistance when required by this chapter, the department shall have a lien on the real property on which the park is located. Such lien shall be collected as delinquent general property taxes and shall be forwarded to the department by the county treasurer.

(7) All tenants eligible for relocation assistance shall apply for verification of eligibility to the department. The department shall issue a document to each tenant signifying the tenant's low-income status, or status other than low income to be given to the park-owner by the tenant.

(8) The director or his or her designee shall approve all expenditures from the fund.

(9) Relocation assistance contributions required from landlords or park-owners by this section shall be reduced by the amount paid or required to be paid under any other law for the same mobile home park tenant for the same relocation.

(10) Notwithstanding RCW 59.21.100, it is a violation of this chapter to request or require as a condition of initiating or renewing a tenancy in a mobile home park, a waiver of relocation assistance under this section or any other law or ordinance. Any such waiver, regardless of the date of its execution, is void and unenforceable as contrary to public policy.

(11) Any park-owner coercing or attempting to coerce a tenant into terminating a tenancy for the purpose of avoiding the payment of relocation assistance shall give rise to a civil cause of action for damages or equitable relief by a tenant injured by such act. [1991 c 327 § 11; 1990 c 171 § 2; 1989 c 201 § 2.]

59.21.030 Notice—Requirements. Notice required by RCW 59.20.080 before park closure or conversion of the park, whether twelve months or longer, shall be given to the director and all tenants in writing, and posted at all park entrances. Notice must also include the tenant's right to relocation assistance, if applicable. Notice must also be recorded in the office of the county auditor for the county where the mobile home park is located. This section shall apply to all park closures even though notice may have been given prior to April 28, 1989. [1990 c 171 § 3; 1989 c 201 § 3.]

59.21.035 Park-owner obligation—Purchasers. The obligation of a park-owner to pay relocation assistance under this chapter runs with the land and is binding upon purchasers, successors and assigns of any park-owner obligated to provide relocation assistance under this chapter. [1990 c 171 § 4.]

59.21.050 Relocation fund—Creation—Administration—Tenant's application. (1) The mobile home park relocation fund is created in the custody of the state treasurer. All legislative appropriations for mobile home relocation assistance, receipts from fees collected under this chapter, and amounts required to be paid by park-owners to low-income park tenants when there are

insufficient moneys in the fund shall be deposited into the fund. Expenditures from the fund may be used only for relocation assistance under RCW 59.21.020, or transfer to the mobile home park purchase fund under subsection (2) of this section. Only the director of community development or the director's designee may authorize expenditures from the fund. All relocation payments to low-income park tenants, including those due from the park-owner shall be made from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(2) Unexpended and unencumbered moneys that remain in the fund at the end of the fiscal year do not revert to the state general fund but remain in the fund, separately accounted for, as a contingency reserve, or if the director determines at the end of any fiscal year beginning after December 31, 1991, that the fund contains a surplus over the projected amount needed for relocation during the upcoming year(s), any surplus may be transferred to the mobile home park purchase fund created by chapter 59.22 RCW. However, the director may cause any uncommitted funds in the mobile home park purchase fund which were transferred from the mobile home park relocation fund to be transferred back to the mobile home park relocation fund if that fund cannot otherwise meet its current obligations.

(3) A low-income park tenant who is entitled to relocation assistance under this chapter is entitled to payment only after submitting an application which includes: (a) A copy of the notice from the park-owner that the tenancy is terminated due to closure of the park; (b) a copy of the rental agreement currently in force; and (c) a copy of the contract entered into for the purpose of relocating the mobile home, which includes the date of relocation.

(4) The director may adopt rules for the administration of the fund. [1991 1st sp.s. c 13 § 74; 1991 c 327 § 12; 1990 c 171 § 5; 1989 c 201 § 5.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

59.21.060 Relocation fund—Transfer fee—Revenue allocation—Expiration of section. (1) There is hereby imposed a fee of sixty-five dollars on every transfer of title issued pursuant to chapter 46.12 RCW on new or used mobile homes where ownership of the mobile home is changed and on each application for the elimination of title under chapter 65.20 RCW. The department of licensing or its agents shall collect the fee when processing the application for transfer or elimination of title. The fee collected under this section shall be forwarded to the state treasurer. The state treasurer shall deposit fifty dollars of each fee collected in the mobile home park relocation fund created under RCW 59.21.050 and the remaining fifteen dollars of each fee collected in the mobile home affairs account created by RCW 59.22.070.

(2) The department of licensing and the state treasurer may enact any rules necessary to carry out this section.

(3) This section shall expire July 1, 1992. [1991 c 327 § 13; 1990 c 171 § 6; 1989 c 201 § 6.]

Effective date—1990 c 171 §§ 6, 7, 8: "Sections 6, 7, and 8 of this act shall take effect July 1, 1990." [1990 c 171 § 11.]

Fifteen dollars of fee superseded: RCW 59.22.085.

Payment of fee: RCW 82.45.090.

59.21.080 Relocation fund—Park-owner contribution—Park closing. Before a mobile home park-owner may close a mobile home park or convert it to another use, the owner shall pay amounts owed for relocation assistance under RCW 59.21.020 to the department for deposit into the fund. A park-owner may give notice as required by RCW 59.20.080 and this chapter before payment of these amounts. [1990 c 171 § 9; 1989 c 201 § 11.]

59.21.085 Relocation fund—Waiver of park-owner contribution—Involuntary park closing. The department shall waive the requirement for a park-owner to pay relocation assistance under this chapter when the mobile home park is involuntarily closed. A park-owner may not avoid the responsibility to pay relocation assistance by failing to provide necessary maintenance to the park. The department shall adopt rules for the granting of waivers under this section. [1991 c 327 § 15.]

59.21.090 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

59.21.095 Relocation fund—Annual fee—Department of revenue—Rules. Each mobile home park-owner shall pay an annual fee of five dollars for each occupied lot in the mobile home park. Lots that are occupied by mobile homes or recreational vehicles owned by the park-owner are exempt from this fee requirement. The fee shall be due on October 1 of each year. The fee shall be remitted by the park-owner to the department of revenue under rules as the department shall prescribe. The fee imposed under this section shall be forwarded by the department of revenue to the state treasurer for deposit into the mobile home park relocation fund. The provisions of chapter 82.32 RCW shall apply to the collection and enforcement of this fee. [1991 c 327 § 9.]

59.21.105 Existing older mobile homes—Forced relocation—Code waiver. (1) The legislature finds that existing older mobile homes provide affordable housing to many persons of low income, and that requiring these homes that are legally located in mobile home parks to meet new fire, safety, and construction codes because they are relocating due to the closure or conversion of the mobile home park, compounds the economic burden facing these tenants.

(2) Mobile homes that are relocated due to either the closure or conversion of a mobile home park, may not be required by any city or county to comply with the requirements of any applicable fire, safety, or construction code for the sole reason of its relocation. This section

shall only apply if the original occupancy classification of the building is not changed as a result of the move.

(3) This section shall not apply to mobile homes that are substantially remodeled or rehabilitated, nor to any work performed in compliance with installation requirements. For the purpose of determining whether a moved mobile home has been substantially remodeled or rebuilt, any cost relating to preparation for relocation or installation shall not be considered. [1991 c 327 § 16.]

59.21.110 Violations—Penalty. Any person who intentionally violates, intentionally attempts to evade, or intentionally evades the provisions of this chapter is guilty of a misdemeanor. [1991 c 327 § 14; 1989 c 201 § 15.]

59.21.901 Construction—1991 c 327. This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections. [1991 c 327 § 17.]

59.21.902 Severability—1991 c 327. 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. [1991 c 327 § 19.]

59.21.903 Effective date—1991 c 327. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991. [1991 c 327 § 20.]

Chapter 59.22

OFFICE OF MOBILE HOME AFFAIRS— RESIDENT-OWNED MOBILE HOME PARKS

Sections	
59.22.020	Definitions.
59.22.030	Mobile home park purchase account.
59.22.050	Office of mobile home affairs—Duties.
59.22.060	Landlord and tenant fees to be paid to department of revenue.
59.22.080	Transfer of title—Fee—Department of licensing—Rules.
59.22.085	Transfer of title—Fee supersedes other fee.
59.22.090	Manufactured housing task force—Duties—Membership.
59.22.900	Repealed.

59.22.020 Definitions. The following definitions shall apply throughout this chapter unless the context clearly requires otherwise:

(1) "Account" means the mobile home affairs account created under RCW 59.22.070.

(2) "Affordable" means that, where feasible, low-income residents should not pay more than thirty percent of their monthly income for housing costs.

(3) "Conversion costs" includes the cost of acquiring the mobile home park, the costs of planning and processing the conversion, the costs of any needed repairs or rehabilitation, and any expenditures required by a government agency or lender for the project.

(4) "Department" means the department of community development.

(5) "Fee" means the mobile home title transfer fee created under RCW 59.21.060.

(6) "Fund" means the mobile home park purchase fund created pursuant to RCW 59.22.030.

(7) "Housing costs" means the total cost of owning, occupying, and maintaining a mobile home and a lot or space in a mobile home park.

(8) "Individual interest in a mobile home park" means any interest which is fee ownership or a lesser interest which entitles the holder to occupy a lot or space in a mobile home park for a period of not less than either fifteen years or the life of the holder. Individual interests in a mobile home park include, but are not limited to, the following:

(a) Ownership of a lot or space in a mobile home park or subdivision;

(b) A membership or shares in a stock cooperative, or a limited equity housing cooperative; or

(c) Membership in a nonprofit mutual benefit corporation which owns, operates, or owns and operates the mobile home park.

(9) "Low-income resident" means an individual or household who resided in the mobile home park prior to application for a loan pursuant to this chapter and with an annual income at or below eighty percent of the median income for the county of standard metropolitan statistical area of residence. Net worth shall be considered in the calculation of income with the exception of the resident's mobile/manufactured home which is used as their primary residence.

(10) "Low-income spaces" means those spaces in a mobile home park operated by a resident organization which are occupied by low-income residents.

(11) "Mobile home park" means a mobile home park, as defined in RCW 59.20.030(4), or a manufactured home park subdivision as defined by RCW 59.20.030(6) created by the conversion to resident ownership of a mobile home park.

(12) "Resident organization" means a group of mobile home park residents who have formed a nonprofit corporation, cooperative corporation, or other entity or organization for the purpose of acquiring the mobile home park in which they reside and converting the mobile home park to resident ownership. The membership of a resident organization shall include at least two-thirds of the households residing in the mobile home park at the time of application for assistance from the department.

(13) "Resident ownership" means, depending on the context, either the ownership, by a resident organization, as defined in this section, of an interest in a mobile home park which entitles the resident organization to control the operations of the mobile home park for a term of no less than fifteen years, or the ownership of individual interests in a mobile home park, or both.

(14) "Landlord" shall have the same meaning as it does in RCW 59.20.030.

(15) "Manufactured housing" means residences constructed on one or more chassis for transportation, and which bear an insignia issued by a state or federal regulatory agency indicating compliance with all applicable construction standards of the United States department of housing and urban development.

(16) "Mobile home" shall have the same meaning as it does in RCW 46.04.302.

(17) "Mobile home lot" shall have the same meaning as it does in RCW 59.20.030.

(18) "Tenant" means a person who rents a mobile home lot for a term of one month or longer and owns the mobile home on the lot. [1991 c 327 § 2; 1988 c 280 § 3; 1987 c 482 § 2.]

~~Construction—Severability—Effective date—1991 c 327: See RCW 59.21.901 through 59.21.903.~~

59.22.030 Mobile home park purchase account. The mobile home park purchase account is hereby created in the state treasury. The purpose of this account is to provide loans according to the provisions of this chapter and for related administrative costs of the department. The account shall include appropriations, loan repayments, and any other money from private sources made available to the state for the purposes of this chapter. Owners of mobile home parks shall not be assessed for the purposes of this account. [1991 1st sp.s. c 13 § 89; 1987 c 482 § 4.]

Reviser's note: Substantial portions of 1987 c 482, authorizing loans from the mobile home park purchase fund [account], were vetoed by the governor.

~~Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.~~

59.22.050 Office of mobile home affairs—Duties.

(1) In order to provide general assistance to mobile home resident organizations, park owners, and landlords and tenants, the department shall establish an office of mobile home affairs which will serve as the coordinating office within state government for matters relating to mobile homes or manufactured housing.

This office will provide an ombudsman service to mobile home park owners and mobile home tenants with respect to problems and disputes between park owners and park residents and to provide technical assistance to resident organizations or persons in the process of forming a resident organization pursuant to chapter 59.22 RCW. The office will keep records of its activities in this area.

(2) The office shall perform all the consumer complaint and related functions of the state administrative agency that are required for purposes of complying with the regulations established by the federal department of housing and urban development for manufactured housing, including the preparation and submission of the state administrative plan.

(3) The office shall administer the mobile home relocation assistance program established in chapter 59.21 RCW, including verifying the eligibility of tenants for

relocation assistance. [1991 c 327 § 3; 1989 c 294 § 1; 1988 c 280 § 2.]

Construction—Severability—Effective date—1991 c 327: See RCW 59.21.901 through 59.21.903.

59.22.060 Landlord and tenant fees to be paid to department of revenue. (1) Every landlord shall register by October 1, 1988, with the department of revenue under such rules as that department shall prescribe.

(2) Every landlord shall pay a fee of one dollar per lot per year, except for unoccupied lots, until December 31, 1990. This fee shall be remitted by the landlord to the department of revenue under such rules as the department shall prescribe. The department of revenue shall forward the one-dollar fee per lot paid by the landlord to the mobile home affairs account created by RCW 59.22.070. [1990 c 171 § 10; 1989 c 201 § 7; 1988 c 280 § 4.]

Severability—1989 c 201: See RCW 59.21.900.

59.22.080 Transfer of title—Fee—Department of licensing—Rules. (1) There is hereby imposed a fee of fifteen dollars on every transfer of title issued pursuant to chapter 46.12 RCW on a new or used mobile home where ownership of the mobile home is changed and on each application for the elimination of title under chapter 65.20 RCW. A transfer of title does not include the addition or deletion of a spouse co-owner or a secured interest. The department of licensing or its agents shall collect the fee when processing the application for transfer or elimination of title. The fee collected under this section shall be forwarded to the state treasurer. The state treasurer shall deposit each fee collected in the mobile home affairs account created by RCW 59.22.070.

(2) The department of licensing and the state treasurer may enact any rules necessary to carry out this section. [1991 c 327 § 1.]

Construction—Severability—Effective date—1991 c 327: See RCW 59.21.901 through 59.21.903.

59.22.085 Transfer of title—Fee supersedes other fee. The fifteen-dollar fee imposed in RCW 59.22.080 on the transfer or elimination of mobile home titles for deposit in the mobile home affairs account, shall supersede the fifteen dollars collected in RCW 59.21.060 for deposit into the mobile home affairs account on July 1, 1991. [1991 c 327 § 7.]

Construction—Severability—Effective date—1991 c 327: See RCW 59.21.901 through 59.21.903.

59.22.090 Manufactured housing task force—Duties—Membership. (1) A manufactured housing task force is established to study and make recommendations concerning the structure state government should use to regulate manufactured housing in this state. In conducting this study, the task force shall review the structures used in other states, including those states with a commission structure. The task force shall consider the report prepared by the department of licensing, the

department of labor and industries, and the department of community development on consolidating mobile home-related functions in conducting its study. The task force may not consider any form of mobile home rent control, but shall consider mobile home park siting and density regulatory issues.

(2) The task force shall submit a final report containing its findings and recommendations to the house of representatives housing committee and the senate commerce and labor committee by December 1, 1992. The task force shall terminate on December 31, 1992.

(3) The task force shall consist of the following members:

(a) Two members of the house of representatives appointed by the speaker of the house of representatives, from different political caucuses;

(b) Two members of the senate appointed by the president of the senate, from different political caucuses;

(c) Two members who represent mobile home park owners, appointed by the governor;

(d) Two members who represent mobile home owners, appointed by the governor;

(e) One member who represents mobile home manufacturers, appointed by the governor;

(f) One member who represents mobile home dealers, appointed by the governor;

(g) One member who represents mobile home transporters, appointed by the governor;

(h) One member who represents local building officials, appointed by the governor;

(i) One member who is either an elected or appointed government official of a county with a population of one hundred thousand or more persons, appointed by the governor;

(j) One member who is either an elected or appointed government official of a county with a population of less than one hundred thousand persons, appointed by the governor;

(k) One member who is either an elected or appointed government official of a city with a population of thirty-five thousand persons, appointed by the governor;

(l) One member who is either an elected or appointed government official of a city with a population of less than thirty-five thousand persons, appointed by the governor;

(m) One member who represents local health officials, appointed by the governor; and

(n) The director, or the director's designee from the department of community development, the department of licensing, the department of labor and industries, and the attorney general's office. The designees shall be nonvoting, ex officio members of the task force.

(4) The members of the task force shall select the chair or co-chairs of the task force.

(5) Staff assistance for the task force will be provided by legislative staff and staff from the agencies or offices listed in subsection (3)(n) of this section. [1991 c 327 § 4.]

Construction—Severability—Effective date—1991 c 327: See RCW 59.21.901 through 59.21.903.

59.22.900 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Title 60 LIENS

Chapters

- 60.04** Mechanics' and materialmen's liens.
- 60.10** Personal property liens—Summary foreclosure.
- 60.11** Crop liens.
- 60.13** Processor and preparer liens for agricultural products.
- 60.20** Labor and material liens for improving property with nursery stock.
- 60.24** Lien for labor and services on timber and lumber.
- 60.48** Lien for engineering services.
- 60.72** Landlord's lien for rent.

Chapter 60.04

MECHANICS' AND MATERIALMEN'S LIENS

Sections

- 60.04.010 Repealed. (Effective April 1, 1992.)
- 60.04.011 Definitions. (Effective April 1, 1992.)
- 60.04.020 Repealed. (Effective April 1, 1992.)
- 60.04.021 Lien authorized. (Effective April 1, 1992.)
- 60.04.030 Repealed. (Effective April 1, 1992.)
- 60.04.031 Notices—Exceptions. (Effective April 1, 1992.)
- 60.04.040 Repealed. (Effective April 1, 1992.)
- 60.04.041 Contractor registration. (Effective April 1, 1992.)
- 60.04.045 Recodified as RCW 60.24.033. (Effective April 1, 1992.)
- 60.04.050 Repealed. (Effective April 1, 1992.)
- 60.04.051 Property subject to lien. (Effective April 1, 1992.)
- 60.04.060 Repealed. (Effective April 1, 1992.)
- 60.04.061 Priority of lien. (Effective April 1, 1992.)
- 60.04.064 Repealed. (Effective April 1, 1992.)
- 60.04.067 Repealed. (Effective April 1, 1992.)
- 60.04.070 Repealed. (Effective April 1, 1992.)
- 60.04.071 Release of lien rights. (Effective April 1, 1992.)
- 60.04.080 Repealed. (Effective April 1, 1992.)
- 60.04.081 Frivolous claim—Procedure. (Effective April 1, 1992.)
- 60.04.090 Repealed. (Effective April 1, 1992.)
- 60.04.091 Recording—Time—Contents of lien. (Effective April 1, 1992.)
- 60.04.100 Repealed. (Effective April 1, 1992.)
- 60.04.101 Separate residential units—Time for filing. (Effective April 1, 1992.)
- 60.04.110 Repealed. (Effective April 1, 1992.)
- 60.04.111 Recording—Fees. (Effective April 1, 1992.)
- 60.04.115 Repealed. (Effective April 1, 1992.)
- 60.04.120 Repealed. (Effective April 1, 1992.)
- 60.04.121 Lien—Assignment. (Effective April 1, 1992.)
- 60.04.130 Repealed. (Effective April 1, 1992.)
- 60.04.131 Claims—Designation of amount due. (Effective April 1, 1992.)
- 60.04.140 Repealed. (Effective April 1, 1992.)
- 60.04.141 Lien—Duration—Procedural limitations. (Effective April 1, 1992.)
- 60.04.150 Repealed. (Effective April 1, 1992.)
- 60.04.151 Rights of owner—Recovery options. (Effective April 1, 1992.)

- 60.04.160 Repealed. (Effective April 1, 1992.)
- 60.04.161 Bond in lieu of claim. (Effective April 1, 1992.)
- 60.04.170 Repealed. (Effective April 1, 1992.)
- 60.04.171 Foreclosure—Parties. (Effective April 1, 1992.)
- 60.04.180 Repealed. (Effective April 1, 1992.)
- 60.04.181 Rank of lien—Application of proceeds—Attorneys' fees. (Effective April 1, 1992.)
- 60.04.191 Effect of note—Personal action preserved. (Effective April 1, 1992.)
- 60.04.200 Repealed. (Effective April 1, 1992.)
- 60.04.201 Material exempt from process—Exception. (Effective April 1, 1992.)
- 60.04.210 Repealed. (Effective April 1, 1992.)
- 60.04.211 Lien—Effect on community interest. (Effective April 1, 1992.)
- 60.04.220 Repealed. (Effective April 1, 1992.)
- 60.04.221 Notice to lender—Withholding of funds. (Effective April 1, 1992.)
- 60.04.226 Financial encumbrances—Priorities. (Effective April 1, 1992.)
- 60.04.230 Construction projects—Notice to be posted by prime contractor—Penalty. (Effective April 1, 1992.)
- 60.04.250 Informational materials on construction lien laws—Master documents.
- 60.04.261 Availability of information. (Effective April 1, 1992.)
- 60.04.900 Liberal construction—1991 c 281.
- 60.04.901 Captions not law—1991 c 281.
- 60.04.902 Effective date, application—1991 c 281.

60.04.010 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

60.04.011 Definitions. (Effective April 1, 1992.) Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Construction agent" means any registered or licensed contractor, registered or licensed subcontractor, architect, engineer, or other person having charge of any improvement to real property, who shall be deemed the agent of the owner for the limited purpose of establishing the lien created by this chapter.

(2) "Contract price" means the amount agreed upon by the contracting parties, or if no amount is agreed upon, then the customary and reasonable charge therefor.

(3) "Draws" means periodic disbursements of interim or construction financing by a lender.

(4) "Furnishing labor, professional services, materials, or equipment" means the performance of any labor or professional services, the contribution owed to any employee benefit plan on account of any labor, the provision of any supplies or materials, and the renting, leasing, or otherwise supplying of equipment for the improvement of real property.

(5) "Improvement" means: (a) Constructing, altering, repairing, remodeling, demolishing, clearing, grading, or filling in, of, to, or upon any real property or street or road in front of or adjoining the same; (b) planting of trees, vines, shrubs, plants, hedges, or lawns, or providing other landscaping materials on any real property; and (c) providing professional services upon real property or in preparation for or in conjunction with the intended activities in (a) or (b) of this subsection.

(6) "Interim or construction financing" means that portion of money secured by a mortgage, deed of trust,

or other encumbrance to finance improvement of, or to real property, but does not include:

- (a) Funds to acquire real property;
- (b) Funds to pay interest, insurance premiums, lease deposits, taxes, assessments, or prior encumbrances;
- (c) Funds to pay loan, commitment, title, legal, closing, recording, or appraisal fees;
- (d) Funds to pay other customary fees, which pursuant to agreement with the owner or borrower are to be paid by the lender from time to time;
- (e) Funds to acquire personal property for which the potential lien claimant may not claim a lien pursuant to this chapter.

(7) "Labor" means exertion of the powers of body or mind performed at the site for compensation. "Labor" includes amounts due and owed to any employee benefit plan on account of such labor performed.

(8) "Mortgagee" means a person who has a valid mortgage of record or deed of trust of record securing a loan.

(9) "Owner" means the record holder of any legal or beneficial title to the real property to be improved or developed.

(10) "Owner-occupied" means a single-family residence occupied by the owner as his or her principal residence.

(11) "Payment bond" means a surety bond issued by a surety licensed to issue surety bonds in the state of Washington that confers upon potential claimants the rights of third party beneficiaries.

(12) "Potential lien claimant" means any person or entity entitled to assert lien rights under this chapter who has otherwise complied with the provisions of this chapter and is registered or licensed if required to be licensed or registered by the provisions of the laws of the state of Washington.

(13) "Prime contractor" includes all contractors, general contractors, and specialty contractors, as defined by chapter 18.27 or 19.28 RCW, or who are otherwise required to be registered or licensed by law, who contract directly with a property owner or their common law agent to assume primary responsibility for the creation of an improvement to real property, and includes property owners or their common law agents who are contractors, general contractors, or specialty contractors as defined in chapter 18.27 or 19.28 RCW, or who are otherwise required to be registered or licensed by law, who offer to sell their property without occupying or using the structures, projects, developments, or improvements for more than one year.

(14) "Professional services" means surveying, establishing or marking the boundaries of, preparing maps, plans, or specifications for, or inspecting, testing, or otherwise performing any other architectural or engineering services for the improvement of real property.

(15) "Real property lender" means a bank, savings bank, savings and loan association, credit union, mortgage company, or other corporation, association, partnership, trust, or individual that makes loans secured by real property located in the state of Washington.

(16) "Site" means the real property which is or is to be improved.

(17) "Subcontractor" means a general contractor or specialty contractor as defined by chapter 18.27 or 19.28 RCW, or who is otherwise required to be registered or licensed by law, who contracts for the improvement of real property with someone other than the owner of the property or their common law agent. [1991 c 281 § 1.]

60.04.020 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

60.04.021 Lien authorized. (Effective April 1, 1992.) Except as provided in RCW 60.04.031, any person furnishing labor, professional services, materials, or equipment for the improvement of real property shall have a lien upon the improvement for the contract price of labor, professional services, materials, or equipment furnished at the instance of the owner, or the agent or construction agent of the owner. [1991 c 281 § 2.]

60.04.030 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

60.04.031 Notices—Exceptions. (Effective April 1, 1992.) (1) Except as otherwise provided in this section, every person furnishing professional services, materials, or equipment for the improvement of real property shall give the owner or reputed owner notice in writing of the right to claim a lien. If the prime contractor is in compliance with the requirements of RCW 19.27.095, 60.04.230, and 60.04.261, this notice shall be given to the prime contractor unless the potential lien claimant has contracted directly with the prime contractor. The notice may be given at any time but only protects the right to claim a lien for professional services, materials, or equipment supplied after the date which is sixty days before:

(a) Mailing the notice by certified or registered mail to the owner or reputed owner; or

(b) Serving the notice personally upon the owner or reputed owner and obtaining evidence of service in the form of a receipt or other acknowledgement signed by the owner or reputed owner.

In the case of new construction of a single-family residence, the notice of a right to claim a lien may be given at any time but only protects the right to claim a lien for professional services, materials, or equipment supplied after a date which is ten days before the notice is mailed or served as described in this subsection.

(2) Notices of a right to claim a lien shall not be required of:

(a) Persons who contract directly with the owner or the owner's common law agent;

(b) Laborers whose claim of lien is based solely on performing labor; or

(c) Subcontractors who contract for the improvement of real property directly with the prime contractor.

(3) Persons who furnish professional services, materials, or equipment in connection with the repair, alteration, or remodel of an existing owner-occupied single-family residence or appurtenant garage:

(a) Who contract directly with the owner-occupier shall not be required to send a written notice of the right to claim a lien and shall have a lien for the full amount due under their contract, as provided in RCW 60.04.021; or

(b) Who do not contract directly with the owner-occupier shall give notice of the right to claim a lien to the owner-occupier. Lien claims by persons who do not contract directly with the owner-occupier may only be satisfied from amounts not yet paid to the prime contractor by the owner at the time the notice described in this section is received, regardless of whether amounts not yet paid to the prime contractor are due.

(4) The notice described in subsection (1) of this section, shall include but not be limited to the following information and shall substantially be in the following form, using lower-case and upper-case ten-point type where appropriate.

NOTICE TO OWNER

**IMPORTANT: READ BOTH SIDES OF THIS NOTICE CAREFULLY.
PROTECT YOURSELF FROM PAYING TWICE**

To: _____ Date: _____
From: _____

AT THE REQUEST OF: (Name of person placing the order)

THIS IS NOT A LIEN: This notice is sent to you to tell you who is providing professional services, materials, or equipment for the improvement of your property and to advise you of the rights of these persons and your responsibilities. Also take note that laborers on your project may claim a lien without sending you a notice.

OWNER/OCCUPIER OF EXISTING RESIDENTIAL PROPERTY

Under Washington law, those who work on or provide materials for the repair, remodel, or alteration of your owner-occupied principal residence and who are not paid, have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

The law limits the amount that a lien claimant can claim against your property. Claims may only be made against that portion of the contract you have not yet paid to your prime contractor as of the time you received this notice. Review the back of this notice for more information and ways to avoid lien claims.

COMMERCIAL AND/OR NEW RESIDENTIAL PROPERTY

We have or will be providing labor, materials, professional services, or equipment for the improvement of your commercial or new residential project. In the event you or your contractor fail to pay us, we may file a lien

against your property. A lien may be claimed for all materials, equipment, and professional services furnished after a date that is sixty days before this notice was mailed to you, unless the improvement to your property is the construction of a new single-family residence, then ten days before this notice was mailed to you.

Sender: _____
Address: _____
Telephone: _____

Brief description of professional services, materials, or equipment provided or to be provided: _____

**IMPORTANT INFORMATION ON REVERSE SIDE
IMPORTANT INFORMATION FOR YOUR PROTECTION**

This notice is sent to inform you that we have or will provide materials, professional services, or equipment for the repair, remodel, or alteration of your property. We expect to be paid by the person who ordered our services, but if we are not paid, we have the right to enforce our claim by filing a construction lien against your property.

LEARN more about the lien laws and the meaning of this notice by discussing [them] with your contractor, suppliers, department of labor and industries, the firm sending you this notice, your lender, or your attorney.

COMMON METHODS TO AVOID CONSTRUCTION LIENS: There are several methods available to protect your property from construction liens. The following are two of the more commonly used methods.

DUAL PAYCHECKS (Joint Checks): When paying your contractor for services or materials, you may make checks payable jointly to the contractor and the firms furnishing you this notice.

LIEN RELEASES: You may require your contractor to provide lien releases signed by all the suppliers and subcontractors from whom you have received this notice. If they cannot obtain lien releases because you have not paid them, you may use the dual payee check method to protect yourself.

YOU SHOULD TAKE WHATEVER STEPS YOU BELIEVE NECESSARY TO PROTECT YOUR PROPERTY FROM LIENS.

YOUR PRIME CONTRACTOR AND YOUR CONSTRUCTION LENDER ARE REQUIRED BY LAW TO GIVE YOU WRITTEN INFORMATION ABOUT LIEN CLAIMS. IF YOU HAVE NOT RECEIVED IT, ASK THEM FOR IT.

(5) Every potential lien claimant providing professional services where no improvement as defined in RCW 60.04.011(5) (a) or (b) has been commenced, and the professional services provided are not visible from an inspection of the real property shall record in the real property records of the county where the property is located a notice which shall contain the provider's name,

address, telephone number, legal description of the property, the owner or reputed owner's name, and the general nature of the professional services provided. If such notice is not recorded, the lien claimed shall be subordinate to the interest of any subsequent mortgagee and invalid as to the interest of any subsequent purchaser who acts in good faith and for a valuable consideration acquires an interest in the property prior to the commencement of an improvement as defined in RCW 60.04.011(5) (a) or (b) without notice of the professional services being provided.

(6) A lien authorized by this chapter shall not be enforced unless the lien claimant has complied with the provisions of this section. [1991 c 281 § 3.]

60.04.040 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

60.04.041 Contractor registration. (Effective April 1, 1992.) A contractor or subcontractor required to be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW, or otherwise required to be registered or licensed by law, shall be deemed the construction agent of the owner for the purposes of establishing the lien created by this chapter only if so registered or licensed. Persons dealing with contractors or subcontractors may rely, for the purposes of this section, upon a certificate of registration issued pursuant to chapter 18.27 RCW or license issued pursuant to chapter 19.28 RCW, or other certificate or license issued pursuant to law, covering the period when the labor, professional services, material, or equipment shall be furnished, and the lien rights shall not be lost by suspension or revocation of registration or license without their knowledge. No lien rights described in this section shall be lost or denied by virtue of the absence, suspension, or revocation of such registration or license with respect to any contractor or subcontractor not in immediate contractual privity with the lien claimant. [1991 c 281 § 4.]

60.04.045 Recodified as RCW 60.24.033. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

60.04.050 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

60.04.051 Property subject to lien. (Effective April 1, 1992.) The lot, tract, or parcel of land which is improved is subject to a lien to the extent of the interest of the person for whom the labor, professional services, equipment, or materials were furnished, as the court deems appropriate for satisfaction of the lien. If, for any reason, the title or interest in the land upon which the improvement is situated cannot be subjected to the lien, the court in order to satisfy the lien may order the sale and removal of the improvement which is subject to the lien, from the land. [1991 c 281 § 5.]

60.04.060 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

60.04.061 Priority of lien. (Effective April 1, 1992.) The claim of lien created by this chapter upon any lot or parcel of land shall be prior to any lien, mortgage, deed of trust, or other encumbrance which attached to the land after or was unrecorded at the time of commencement of labor or professional services or first delivery of materials or equipment by the lien claimant. [1991 c 281 § 6.]

60.04.064 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

60.04.067 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

60.04.070 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

60.04.071 Release of lien rights. (Effective April 1, 1992.) Upon payment and acceptance of the amount due to the lien claimant and upon demand of the owner or the person making payment, the lien claimant shall immediately prepare and execute a release of all lien rights for which payment has been made, and deliver the release to the person making payment. In any suit to compel deliverance of the release thereafter in which the court determines the delay was unjustified, the court shall, in addition to ordering the deliverance of the release, award the costs of the action including reasonable attorneys' fees and any damages. [1991 c 281 § 7.]

60.04.080 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

60.04.081 Frivolous claim—Procedure. (Effective April 1, 1992.) (1) Any owner of real property subject to a recorded notice of claim of lien under this chapter, or the contractor or subcontractor who believes the claim of lien to be frivolous and made without reasonable cause, or clearly excessive may apply to the superior court for the county where the property, or some part thereof is located, for an order directing the lien claimant to appear before the court at a time no earlier than six nor later than fifteen days following the date of service of the application and order on the lien claimant, and show cause, if any he or she has, why the lien claim should not be dismissed, with prejudice.

(2) The order shall clearly state that if the lien claimant fails to appear at the time and place noted the lien claim shall be dismissed, with prejudice[,] and that the lien claimant shall be ordered to pay the costs requested by the applicant including reasonable attorneys' fees.

(3) If no action to foreclose the lien claim has been filed, the clerk of the court shall assign a cause number

to the application and obtain from the applicant a filing fee of thirty-five dollars. If an action has been filed to foreclose the lien claim, the application shall be made a part of that action.

(4) If, following a full hearing on the matter, the court determines that the lien claim is frivolous and made without reasonable cause, or clearly excessive, the court shall issue an order dismissing the lien claim if frivolous or reducing the claim if clearly excessive, and awarding costs and reasonable attorneys' fees to the applicant to be paid by the lien claimant. If the court determines that the claim of lien is not frivolous and made with reasonable cause, and is not clearly excessive, the court shall issue and order so stating and awarding costs and reasonable attorneys' fees to the lien claimant to be paid by the applicant.

(5) Proceedings under this section shall not affect other rights and remedies available to the parties under this chapter or otherwise. [1991 c 281 § 8.]

60.04.090 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

60.04.091 Recording—Time—Contents of lien. (Effective April 1, 1992.) Every person claiming a lien under RCW 60.04.021 shall record, in the county where the subject property is located, a notice of claim of lien not later than ninety days after the person has ceased to furnish labor, professional services, materials, or equipment or the last date on which employee benefit contributions were due. The notice of claim of lien:

(1) Shall state in substance and effect:

(a) The name, phone number, and address of the claimant;

(b) The first and last date on which the labor, professional services, materials, or equipment was furnished or employee benefit contributions were due;

(c) The name of the person indebted to the claimant;

(d) The street address, legal description, or other description reasonably calculated to identify, for a person familiar with the area, the location of the real property to be charged with the lien;

(e) The name of the owner or reputed owner of the property, if known, and, if not known, that fact shall be stated; and

(f) The principal amount for which the lien is claimed.

(2) Shall be signed by the claimant or some person authorized to act on his or her behalf who shall affirmatively state they have read the notice of claim of lien and believe the notice of claim of lien to be true and correct under penalty of perjury, and shall be acknowledged pursuant to chapter 64.08 RCW. If the claim has been assigned, the name of the assignee shall be stated. Where an action to foreclose the lien has been commenced such notice of claim of lien may be amended as pleadings may be by order of the court insofar as the interests of third parties are not adversely affected by such amendment. A claim of lien substantially in the following form shall be sufficient:

-----, claimant, vs -----, owner or reputed owner

Notice is hereby given that on the ---- day of ----- (date of commencement of furnishing labor, professional services, materials, or equipment and the last date contributions to any type of employee benefit plan became due), ----- at the request of -----, ----- commenced to (perform labor, furnish professional services, materials, or equipment) upon ----- (here describe property subject to the lien) of which property the owner, or reputed owner, is ----- (or if the owner or reputed owner is not known, insert the word "unknown"), the (furnishing of labor, professional services, materials, or equipment) ceased on the ---- day of -----; that said (labor, professional services, material, or equipment) was of the value of ----- dollars, for which the undersigned claims a lien upon the property herein described for the sum of ----- dollars. (In case the claim has been assigned, add the words "and ----- is assignee of said claim", or claims, if several are united.)

-----, Claimant.

(Phone number, address, city, and state of claimant)

STATE OF WASHINGTON, COUNTY OF

-----, ss.

-----, being sworn, says: I am the claimant (or attorney of the claimant, or administrator, representative, or agent of the trustees of an employee benefit plan) above named; I have read or heard the foregoing claim, read and know the contents thereof, and believe the same to be true and correct under penalty of perjury.

Subscribed and sworn to before me this ---- day of -----

The period provided for recording the notice is a period of limitation and no action to foreclose a claim of lien shall be maintained unless the notice is recorded within the ninety-day period stated. The lien claimant shall give notice of the claim of lien to the owner or reputed owner by certified or registered mail or by personal service within fourteen days of the time the claim is recorded. Failure to do so results in a forfeiture of any right the claimant may have to attorneys' fees and costs against the owner under RCW 60.04.181. [1991 c 281 § 9.]

60.04.100 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

60.04.101 Separate residential units—Time for filing. (Effective April 1, 1992.) When furnishing labor, professional services, materials, or equipment for the construction of two or more separate residential units, the time for filing claims of lien against each separate residential unit shall commence to run upon the cessation of the furnishing of labor, professional services, materials, or equipment on each residential unit, as provided in this chapter. For the purposes of this section a separate residential unit is defined as consisting of one residential structure together with any garages or other outbuildings appurtenant thereto. [1991 c 281 § 10.]

60.04.110 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

60.04.111 Recording—Fees. (Effective April 1, 1992.) The county auditor shall record the notice of claim of lien in the same manner as deeds and other instruments of title are recorded under chapter 65.08 RCW. Notices of claim of lien for registered land need not be recorded in the Torrens register. The county auditor shall charge no higher fee for recording notices of claim of lien than other documents. [1991 c 281 § 11.]

60.04.115 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

60.04.120 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

60.04.121 Lien—Assignment. (Effective April 1, 1992.) Any lien or right of lien created by this chapter and the right of action to recover therefor, shall be assignable so as to vest in the assignee all rights and remedies of the assignor, subject to all defenses thereto that might be made. [1991 c 281 § 12.]

60.04.130 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

60.04.131 Claims—Designation of amount due. (Effective April 1, 1992.) In every case in which the notice of claim of lien is recorded against two or more separate pieces of property owned by the same person or owned by two or more persons jointly or otherwise, who contracted for the labor, professional services, material, or equipment for which the notice of claim of lien is recorded, the person recording the notice of claim of lien shall designate in the notice of claim of lien the amount due on each piece of property, otherwise the lien is subordinated to other liens that may be established under this chapter. The lien of such claim does not extend beyond the amount designated as against other creditors having liens upon any of such pieces of property. [1991 c 281 § 13.]

60.04.140 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

60.04.141 Lien—Duration—Procedural limitations. (Effective April 1, 1992.) No lien created by this chapter binds the property subject to the lien for a longer period than eight calendar months after the notice of claim of lien has been recorded unless an action is filed by the lien claimant within that time in the superior court in the county where the subject property is located to enforce the lien, and service is made upon the owner of the subject property within ninety days of the date of filing the action; or, if credit is given and the terms thereof are stated in the notice of claim of lien, then eight calendar months after the expiration of such credit; and in case the action is not prosecuted to judgment within two years after the commencement thereof, the court, in its discretion, may dismiss the action for want of prosecution, and the dismissal of the action or a judgment rendered thereon that no lien exists shall constitute a cancellation of the lien. This is a period of limitation, which shall be tolled by the filing of any petition seeking protection under Title Eleven, United States Code by an owner of any property subject to the lien established by this chapter. [1991 c 281 § 14.]

60.04.150 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

60.04.151 Rights of owner—Recovery options. (Effective April 1, 1992.) The lien claimant shall be entitled to recover upon the claim recorded the contract price after deducting all claims of other lien claimants to whom the claimant is liable, for furnishing labor, professional services, materials, or equipment; and in all cases where a notice of claim of lien shall be recorded under this chapter for labor, professional services, materials, or equipment supplied to any lien claimant, he or she shall defend any action brought thereupon at his or her own expense; and during the pendency of the action, the owner may withhold from the prime contractor the amount of money for which a claim is recorded by any subcontractor, supplier, or laborer; and in case of judgment against the owner or the owner's property, upon the lien, the owner shall be entitled to deduct the principal amount of the judgment from any amount due or to become due from him or her to the lien claimant plus such costs, including interest and attorneys' fees, as the court deems just and equitable, and he or she shall be entitled to recover back from the lien claimant the amount for which the lien is established in excess of any sum that may remain due from him or her to the lien claimant. [1991 c 281 § 15.]

60.04.160 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

60.04.161 Bond in lieu of claim. (Effective April 1, 1992.) Any owner of real property subject to a recorded notice of claim of lien under this chapter, or the contractor or subcontractor who disputes the correctness or validity of the notice of claim of lien may record, either before or after the commencement of an action to enforce the lien, in the office of the county recorder or auditor in the county where the notice of claim of lien was recorded, a bond issued by a surety company authorized to issue surety bonds in the state. The surety shall be listed in the latest federal department of the treasury list of surety companies acceptable on federal bonds, published in the Federal Register, as authorized to issue bonds on United States government projects with an underwriting limitation, including applicable reinsurance, equal to or greater than the amount of the bond to be recorded. The bond shall contain a description of the notice of claim of lien and real property involved, and be in an amount equal to the greater of five thousand dollars or two times the amount of the lien claimed if it is ten thousand dollars or less, and in an amount equal to or greater than one and one-half times the amount of the lien if it is in excess of ten thousand dollars. If the notice of claim of lien affects more than one parcel of real property and is segregated to each parcel, the bond may be segregated the same as in the notice of claim of lien. A separate bond shall be required for each notice of claim of lien made by separate claimants. However, a single bond may be used to guarantee payment of amounts claimed by more than one lien claim by a single claimant so long as the amount of the bond meets the requirements of this section as applied to the aggregate sum of all claims by such claimant. The condition of the bond shall be to guarantee payment of any judgment upon the lien in favor of the lien claimant entered in any action to recover the amount claimed in a notice of claim of lien, or on the claim asserted in the notice of claim of lien. The effect of recording a bond shall be to release the real property described in the notice of claim of lien from the lien and any action brought to recover the amount claimed. Unless otherwise prohibited by law, if no action is commenced to recover on a lien within the time specified in RCW 60.04.141, the surety shall be discharged from liability under the bond. If an action is timely commenced, then on payment of any judgment entered in the action or on payment of the full amount of the bond to the holder of the judgment, whichever is less, the surety shall be discharged from liability under the bond.

Nothing in this section shall in any way prohibit or limit the use of other methods, devised by the affected parties to secure the obligation underlying a claim of lien and to obtain a release of real property from a claim of lien. [1991 c 281 § 16.]

60.04.170 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

60.04.171 Foreclosure—Parties. (Effective April 1, 1992.) The lien provided by this chapter, for which

claims of lien have been recorded, may be foreclosed and enforced by a civil action in the court having jurisdiction in the manner prescribed for the judicial foreclosure of a mortgage. The court shall have the power to order the sale of the property. In any action brought to foreclose a lien, the owner shall be joined as a party. The lien claims of all persons who, prior to the commencement of the action, have legally recorded claims of lien against the same property, or any part thereof, shall not be foreclosed or affected unless they are joined as a party.

A person shall not begin an action to foreclose a lien upon any property while a prior action begun to foreclose another lien on the same property is pending, but if not made a party plaintiff or defendant to the prior action, he or she may apply to the court to be joined as a party thereto, and his or her lien may be foreclosed in the same action. The filing of such application shall toll the running of the period of limitation established by RCW 60.04.141 until disposition of the application or other time set by the court. The court shall grant the application for joinder unless to do so would create an undue delay or cause hardship which cannot be cured by the imposition of costs or other conditions as the court deems just. If a lien foreclosure action is filed during the pendency of another such action, the court may, on its own motion or the motion of any party, consolidate actions upon such terms and conditions as the court deems just, unless to do so would create an undue delay or cause hardship which cannot be cured by the imposition of costs or other conditions. If consolidation of actions is not permissible under this section, the lien foreclosure action filed during the pendency of another such action shall not be dismissed if the filing was the result of mistake, inadvertence, surprise, excusable neglect, or irregularity. An action to foreclose a lien shall not be dismissed at the instance of a plaintiff therein to the prejudice of another party to the suit who claims a lien. [1991 c 281 § 17.]

60.04.180 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

60.04.181 Rank of lien—Application of proceeds—Attorneys' fees. (Effective April 1, 1992.) (1) In every case in which different construction liens are claimed against the same property, the court shall declare the rank of such lien or class of liens, which liens shall be in the following order:

- (a) Liens for the performance of labor;
- (b) Liens for contributions owed to employee benefit plans;
- (c) Liens for furnishing material, supplies, or equipment;
- (d) Liens for subcontractors, including but not limited to their labor and materials; and
- (e) Liens for prime contractors, or for professional services.

(2) The proceeds of the sale of property must be applied to each lien or class of liens in order of its rank and, in an action brought to foreclose a lien, pro rata

among each claimant in each separate priority class. A personal judgment may be rendered against any party personally liable for any debt for which the lien is claimed. If the lien is established, the judgment shall provide for the enforcement thereof upon the property liable as in the case of foreclosure of judgment liens. The amount realized by such enforcement of the lien shall be credited upon the proper personal judgment. The deficiency, if any, remaining unsatisfied, shall stand as a personal judgment, and may be collected by execution against any party liable therefor.

(3) The court may allow the prevailing party in the action, whether plaintiff or defendant, as part of the costs of the action, the moneys paid for recording the notice of claim of lien, costs of title report, bond costs, and attorneys' fees and necessary expenses incurred by the attorney in the superior court, court of appeals, supreme court, or arbitration, as the court or arbitrator deems reasonable. Such costs shall have the priority of the class of lien to which they are related, as established by subsection (1) of this section.

(4) Real property against which a lien under this chapter is enforced may be ordered sold by the court and the proceeds deposited into the registry of the clerk of the court, pending further determination respecting distribution of the proceeds of the sale. [1991 c 281 § 18.]

60.04.191 Effect of note—Personal action preserved. (Effective April 1, 1992.) The taking of a promissory note or other evidence of indebtedness for any labor, professional services, material, or equipment furnished for which a lien is created by this chapter does not discharge the lien therefor, unless expressly received as payment and so specified therein.

Nothing in this chapter shall be construed to impair or affect the right of any person to whom any debt may be due for the furnishing of labor, professional services, material, or equipment to maintain a personal action to recover the debt against any person liable therefor. [1991 c 281 § 19.]

60.04.200 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

60.04.201 Material exempt from process—Exception. (Effective April 1, 1992.) Whenever material is furnished for use in the improvement of property subject to a lien created by this chapter, the material is not subject to attachment, execution, or other legal process to enforce any debt due by the purchaser of the material, except a debt due for the purchase money thereof, so long as in good faith, the material is about to be applied in the improvement of such property. [1991 c 281 § 20.]

60.04.210 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

60.04.211 Lien—Effect on community interest. (Effective April 1, 1992.) The claim of lien, when filed as required by this chapter, shall be notice to the husband or wife of the person who appears of record to be the owner of the property sought to be charged with the lien, and shall subject all the community interest of both husband and wife to the lien. [1991 c 281 § 21.]

60.04.220 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

60.04.221 Notice to lender—Withholding of funds. (Effective April 1, 1992.) Any lender providing interim or construction financing where there is not a payment bond of at least fifty percent of the amount of construction financing shall observe the following procedures and the rights and liabilities of the lender and potential lien claimant shall be affected as follows:

(1) Any potential lien claimant who has not received a payment within five days after the date required by their contract, invoice, employee benefit plan agreement, or purchase order may within thirty-five days of the date required for payment of the contract, invoice, employee benefit plan agreement, or purchase order, file a notice as provided in subsections (2) and (3) of this section of the sums due and to become due, for which a potential lien claimant may claim a lien under this chapter.

(2) The notice shall be signed by the potential lien claimant or some person authorized to act on his or her behalf who shall affirmatively state under penalty of perjury, they have read the notice and believe it to be true and correct.

(3) The notice shall be filed in writing with the lender at the office administering the interim or construction financing, with a copy furnished to the owner and appropriate prime contractor. The notice shall state in substance and effect as follows:

(a) The person, firm, trustee, or corporation filing the notice is entitled to receive contributions to any type of employee benefit plan or has furnished labor, professional services, materials, or equipment for which a right of lien is given by this chapter.

(b) The name of the prime contractor, common law agent, or construction agent ordering the same.

(c) A common or street address of the real property being improved or the legal description of the real property.

(d) The name, business address, and telephone number of the lien claimant.

The notice to the lender may contain additional information but shall be in substantially the following form:

NOTICE TO REAL PROPERTY LENDER
(Authorized by RCW -----)

TO: -----
(Name of Lender)

(Administrative Office—Street Address)

(City) (State) (Zip)
AND TO: -----
(Owner)

AND TO: -----
(Prime Contractor--If Different Than Owner)

(Name of Laborer, Professional, Materials, or Equipment Supplier)
whose business address is -----, did at the property located at -----

(Check appropriate box) () perform labor () furnish professional services () provide materials () supply equipment as follows:

which was ordered by -----
(Name of Person)

whose address was stated to be -----

The amount owing to the undersigned according to contract or purchase order for labor, supplies, or equipment (as above mentioned) is the sum of ----- dollars (\$ -----). Said sums became due and owing as of -----

(State Date)

You are hereby required to withhold from any future draws on existing construction financing which has been made on the subject property (to the extent there remain undisbursed funds) the sum of ----- dollars (\$ -----).

IMPORTANT

Failure to comply with the requirements of this notice may subject the lender to a whole or partial compromise of any priority lien interest it may have pursuant to RCW 60.04.226.

DATE: -----

By: -----

Its: -----

(4) After the receipt of the notice, the lender shall withhold from the next and subsequent draws the amount claimed to be due as stated in the notice. Alternatively, the lender may obtain from the prime contractor or borrower a payment bond for the benefit of the potential lien claimant in an amount sufficient to cover the amount stated in the potential lien claimant's notice. The lender shall be obligated to withhold amounts only to the extent that sufficient interim or construction financing funds remain undisbursed as of the date the lender receives the notice.

(5) Sums so withheld shall not be disbursed by the lender, except by the written agreement of the potential lien claimant, owner, and prime contractor in such form as may be prescribed by the lender, or the order of a court of competent jurisdiction.

(6) In the event a lender fails to abide by the provisions of subsections (4) and (5) of this section, then the mortgage, deed of trust, or other encumbrance securing the lender will be subordinated to the lien of the potential lien claimant to the extent of the interim or construction financing wrongfully disbursed, but in no event more than the amount stated in the notice plus costs as fixed by the court, including reasonable attorneys' fees.

(7) Any potential lien claimant shall be liable for any loss, cost, or expense, including reasonable attorneys' fees and statutory costs, to a party injured thereby arising out of any unjust, excessive, or premature notice filed under purported authority of this section. "Notice" as used in this subsection does not include notice given

by a potential lien claimant of the right to claim liens under this chapter where no actual claim is made.

(8)(a) Any owner of real property subject to a notice to real property lender under this section, or the contractor or subcontractor who believes the claim that underlies the notice is frivolous and made without reasonable cause, or clearly excessive may apply to the superior court for the county where the property, or some part thereof is located, for an order commanding the potential lien claimant who issued the notice to the real property lender to appear before the court at a time no earlier than six nor later than fifteen days from the date of service of the application and order on the potential lien claimant, and show cause, if any he or she has, why the notice to real property lender should not be declared void.

(b) The order shall clearly state that if the potential lien claimant fails to appear at the time and place noted, the notice to lender shall be declared void and that the potential lien claimant issuing the notice shall be ordered to pay the costs requested by the applicant including reasonable attorneys' fees.

(c) The clerk of the court shall assign a cause number to the application and obtain from the applicant a filing fee of thirty-five dollars.

(d) If, following a full hearing on the matter, the court determines that the claim upon which the notice to real property lender is based is frivolous and made without reasonable cause, or clearly excessive, the court shall issue an order declaring the notice to real property lender void if frivolous, or reducing the amount stated in the notice if clearly excessive, and awarding costs and reasonable attorneys' fees to the applicant to be paid by the person who issued the notice. If the court determines that the claim underlying the notice to real property lender is not frivolous and made with reasonable cause, and is not clearly excessive, the court shall issue an order so stating and awarding costs and reasonable attorneys' fees to the issuer of the notice to be paid by the applicant.

(e) Proceedings under this subsection shall not affect other rights and remedies available to the parties under this chapter or otherwise. [1991 c 281 § 22.]

60.04.226 Financial encumbrances—Priorities. (Effective April 1, 1992.) Except as otherwise provided in RCW 60.04.061 or 60.04.221, any mortgage or deed of trust shall be prior to all liens, mortgages, deeds of trust, and other encumbrances which have not been recorded prior to the recording of the mortgage or deed of trust to the extent of all sums secured by the mortgage or deed of trust regardless of when the same are disbursed or whether the disbursements are obligatory. [1991 c 281 § 23.]

60.04.230 Construction projects—Notice to be posted by prime contractor—Penalty. (Effective April 1, 1992.) (1) For any construction project costing more than five thousand dollars the prime contractor shall post in plain view for the duration of the construction

project a legible notice at the construction job site containing the following:

(a) The legal description, or the tax parcel number assigned pursuant to RCW 84.40.160, and the street address if available, and may include any other identification of the construction site by the prime contractor;

(b) The property owner's name, address, and phone number;

(c) The prime contractor's business name, address, phone number, current state contractor registration number and identification; and

(d) Either:

(i) The name, address, and phone number of the office of the lender administering the interim construction financing, if any; or

(ii) The name and address of the firm that has issued a payment bond, if any, on behalf of the prime contractor for the protection of the owner if the bond is for an amount not less than fifty percent of the total amount of the construction project.

(2) For any construction project which requires a building permit under local ordinance, compliance with the posting requirements of RCW 19.27.095 shall constitute compliance with this section. Otherwise, the information shall be posted as set forth in this section.

(3) Failure to comply with this section shall subject the prime contractor to a civil penalty of not more than five thousand dollars, payable to the county where the project is located. [1991 c 281 § 28; 1984 c 202 § 3.]

60.04.250 Informational materials on construction lien laws—Master documents. The department of labor and industries shall prepare master documents that provide informational material about construction lien laws and available safeguards against real property lien claims. The material shall include methods of protection against lien claims, including obtaining lien release documents, performance bonds, joint payee checks, the opportunity to require contractor disclosure of all potential lien claimants as a condition of payment, and lender supervision under *RCW 60.04.200 and 60.04.210. The material shall also include sources of further information, including the department of labor and industries and the office of the attorney general. [1990 c 81 § 1; 1988 c 270 § 1.]

*Reviser's note: RCW 60.04.200 and 60.04.210 were repealed by 1991 c 281 § 31, effective April 1, 1992.

Effective date—1988 c 270: "This act shall take effect July 1, 1989." [1988 c 270 § 4.]

60.04.261 Availability of information. (Effective April 1, 1992.) The prime contractor shall immediately supply the information listed in RCW 19.27.095(2) to any person who has contracted to supply materials, equipment, or professional services or who is a subcontractor on the improvement, as soon as the identity and mailing address of such subcontractor, supplier, or professional is made known to the prime contractor either directly or through another subcontractor, supplier, or professional. [1991 c 281 § 24.]

60.04.900 Liberal construction—1991 c 281. RCW 19.27.095, 60.04.230, and 60.04.011 through 60.04.226 and 60.04.261 are to be liberally construed to provide security for all parties intended to be protected by their provisions. [1991 c 281 § 25.]

60.04.901 Captions not law—1991 c 281. Section headings as used in this chapter do not constitute any part of the law. [1991 c 281 § 26.]

60.04.902 Effective date, application—1991 c 281. This act shall take effect April 1, 1992. Lien claims based on an improvement commenced by a potential lien claimant on or after April 1, 1992, shall be governed by the provisions of this act. [1991 c 281 § 32.]

Chapter 60.10 PERSONAL PROPERTY LIENS—SUMMARY FORECLOSURE

Sections

60.10.020 Methods of foreclosure.

60.10.020 Methods of foreclosure. Any lien upon personal property, excluded by RCW 62A.9-104 from the provisions of the Uniform Commercial Code (Title 62A RCW), may be foreclosed by: (1) An action in the district court having jurisdiction in the district in which the property is situated in accordance with RCW 61.12.162, if the value of the claim does not exceed the jurisdictional limit of the district court provided in RCW 3.66.020; or (2) an action in the superior court having jurisdiction in the county in which the property is situated in accordance with RCW 61.12.162, if the value of the claim exceeds the jurisdictional limit of the district court provided in RCW 3.66.020; or (3) summary procedure as provided in this chapter. [1991 c 33 § 3; 1969 c 82 § 3.]

Effective date—1991 c 33: See note following RCW 3.66.020.

Chapter 60.11 CROP LIENS

Sections

60.11.010 Definitions.
60.11.020 Persons entitled to crop liens—Property subject to lien.
60.11.030 Attachment of liens—Attachment of proceeds.
60.11.040 Claim of lien—Filing—Contents—Duration.
60.11.050 Priorities of liens and security interests.
60.11.060 Foreclosure of crop lien.
60.11.140 Lien termination statement.

60.11.010 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Crop" means all products of the soil either growing or cropped, cut, or gathered which require annual planting, harvesting, or cultivating. A crop does not include vegetation produced by the powers of nature alone,

nursery stock, or vegetation intended as a permanent enhancement of the land itself.

(2) "Handler" means a person: Who prepares an orchard crop for market for the account of, or as agent for, the producer of the crop, which preparation includes, but is not limited to, receiving, storing, packing, marketing, selling, or delivering the orchard crop; and who takes delivery of the crop from the producer of the crop or from another handler. "Handler" does not include a person who solely transports the crop from the producer to another person.

(3) "Landlord" means a person who leases or sub-leases to a tenant real property upon which crops are growing or will be grown.

(4) "Orchard crop" means cherries, peaches, nectarines, plums or prunes, pears, apricots, and apples.

(5) "Secured party" and "security interest" have the same meaning as used in the Uniform Commercial Code, Title 62A RCW.

(6) "Supplier" includes, but is not limited to, a person who furnishes seed, furnishes and/or applies commercial fertilizer, pesticide, fungicide, weed killer, or herbicide, including spraying and dusting, upon the land of the grower or landowner, or furnishes any work or labor upon the land of the grower or landowner including tilling, preparing for the growing of crops, sowing, planting, cultivating, cutting, digging, picking, pulling, or otherwise harvesting any crop grown thereon, or in gathering, securing, or housing any crop grown thereon, or in threshing any grain or hauling to any warehouse any crop or grain grown thereon.

(7) "Lien debtor" means the person who is obligated or owes payment or other performance. If the lien debtor and the owner of the collateral are not the same person, "lien debtor" means the owner of the collateral.

(8) "Lien holder" means a person who, by statute, has acquired a lien on the property of the lien debtor, or such person's successor in interest. [1991 c 286 § 1; 1986 c 242 § 1.]

60.11.020 Persons entitled to crop liens—Property subject to lien. (1) A landlord whose lease or other agreement with the tenant provides for cash rental payment shall have a lien upon all crops grown upon the demised land in which the landlord has an interest for no more than one year's rent due or to become due within six months following harvest. A landlord with a crop share agreement has an interest in the growing crop which shall not be encumbered by crop liens except as provided in subsections (2) and (3) of this section.

(2) A supplier shall have a lien upon all crops for which the supplies are used or applied to secure payment of the purchase price of the supplies and/or services performed: PROVIDED, That the landlord's interest in the crop shall only be subject to the lien for the amount obligated to be paid by the landlord if prior written consent of the landlord is obtained or if the landlord has agreed in writing with the tenant to pay or be responsible for a portion of the supplies and/or services provided by the lien holder.

(3) A handler shall have a lien on all orchard crops delivered by the lien debtor or another handler to the handler and on all proceeds of the orchard crops for: (a) All customary charges for the ordinary and necessary handling of the crop, including but not limited to charges for transporting, receiving, inspecting, materials and supplies furnished, washing, waxing, sorting, packing, storing, promoting, marketing, selling, advertising, insuring, or otherwise handling the lien debtor's crop; and (b) reasonable cooperative per unit retainages, and for all governmental or quasi-governmental assessments imposed by statute, ordinance, or government regulation. Charges shall not include direct or indirect advances or extensions of credit to [a] lien debtor. [1991 c 286 § 2; 1986 c 242 § 2.]

60.11.030 Attachment of liens—Attachment of proceeds. (1) Upon filing, the liens described in RCW 60.11.020 (1) and (2) shall attach to the crop for all sums then and thereafter due and owing the lien holder and shall continue in all identifiable cash proceeds of the crop.

(2) Upon the delivery of an orchard crop by the lien debtor, without the necessity of filing, the lien for charges as set forth in RCW 60.11.020(3) shall attach to the delivered crop and shall continue in both the crop and all proceeds of the crop. [1991 c 286 § 3; 1986 c 242 § 3.]

60.11.040 Claim of lien—Filing—Contents—Duration. (1) Except as provided in subsection (4) of this section with respect to the lien of a landlord, and except for the lien of a handler as provided in RCW 60.11.020(3), any lien holder must after the commencement of delivery of such supplies and/or of provision of such services, but before the completion of the harvest of the crops for which the lien is claimed, or in the case of a lien for furnishing work or labor within twenty days after the cessation of the work or labor for which the lien is claimed: (a) File a statement evidencing the lien with the department of licensing; and (b) if the lien holder is to be allowed costs, disbursements, and attorneys' fees, mail a copy of such statement to the last known address of the debtor by certified mail, return receipt requested, within ten days.

(2) The statement shall be in writing, signed by the claimant, and shall contain in substance the following information:

- (a) The name and address of the claimant;
- (b) The name and address of the debtor;
- (c) The date of commencement of performance for which the lien is claimed;
- (d) A description of the labor services, materials, or supplies furnished;
- (e) A description of the crop and its location to be charged with the lien sufficient for identification; and
- (f) The signature of the claimant.

(3) The department of licensing may by rule prescribe standard filing forms, fees, and uniform procedures for filing with, and obtaining information from, filing officers, including provisions for filing crop liens together

with financing statements filed pursuant to RCW 62A.9-401 so that one request will reveal all filed crop liens and security interests.

(4) Any landlord claiming a lien under this chapter for rent shall file a statement evidencing the lien with the department of licensing. A lien for rent claimed by a landlord pursuant to this chapter shall be effective during the term of the lease for a period of up to five years. A landlord lien covering a lease term longer than five years may be refiled in accordance with RCW 60.11.050(5). A landlord who has a right to a share of the crop may place suppliers on notice by filing evidence of such interest in the same manner as provided for filing a landlord's lien. [1991 c 286 § 4; 1989 c 229 § 1; 1986 c 242 § 4.]

Severability—1989 c 229: "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." [1989 c 229 § 2.]

60.11.050 Priorities of liens and security interests.

(1) Except as provided in subsections (2), (3), (4), and (5) of this section, conflicting liens and security interests shall rank in accordance with the time of filing.

(2) The lien created in RCW 60.11.020(2) in favor of any person who furnishes any work or labor upon the land of the grower or landowner shall be preferred and prior to any other lien or security interest upon the crops to which they attach including the liens described in subsections (3), (4), and (5) of this section.

(3) The lien created in RCW 60.11.020(3) in favor of handlers is preferred and prior to a lien or security interest described in subsection (4) or (5) of this section and to any other lien or security interest upon the crops to which they attach except the liens in favor of a person who furnishes work or labor upon the land of the grower or landlord. Whenever more than one handler holds a handler's lien created by RCW 60.11.020(3) in the same crop, unless the affected parties otherwise agree in writing, the later of the liens to attach has priority over all previously attached handlers' liens.

(4) A lien or security interest in crops otherwise entitled to priority pursuant to subsection (1) of this section shall be subordinate to a later filed lien or security interest incurred to produce the crop to the extent that obligations secured by such earlier filed security interest or lien were not incurred to produce such crops.

(5) A lien or security interest in crops otherwise entitled to priority pursuant to subsection (1) of this section shall be subordinate to a properly filed landlord's lien. A landlord's lien shall retain its priority if refiled within six months prior to its expiration. [1991 c 286 § 5; 1986 c 242 § 5.]

60.11.060 Foreclosure of crop lien. Any lien subject to this chapter, excluded by RCW 62A.9-104 from the provisions of the Uniform Commercial Code, Title 62A RCW, may be foreclosed by: (1) An action in the district court having jurisdiction in the district in which the real property on which the crop in question was grown is situated in accordance with RCW 60.11.070, if the value

of the claim does not exceed the jurisdictional limit of the district court provided in RCW 3.66.020; or (2) an action in the superior court having jurisdiction in the county in which the real property on which the crop in question was grown is situated in accordance with RCW 60.11.070, if the value of the claim exceeds the jurisdictional limit of the district court provided in RCW 3.66.020; or (3) summary procedure as provided in RCW 60.11.080. [1991 c 33 § 4; 1986 c 242 § 6.]

Effective date—1991 c 33: See note following RCW 3.66.020.

60.11.140 Lien termination statement. (1) Whenever the total amount of the lien has been fully paid, the lien holder filing a lien shall, within fifteen days following receipt of full payment, file its lien termination statement with the department of licensing. Failure to file a lien termination statement by the lien holder or the assignee of the lien holder shall cause the lien holder or its assignee to be liable to the debtor for the attorneys' fees and costs incurred by the debtor to have the lien terminated together with damages incurred by the debtor due to the failure of the lien holder to terminate the lien.

(2) There shall be no charge by the department of licensing for entering the lien termination statement and indexing the same and returning a copy of the lien termination statement stamped as "filed" with the filing date thereon.

(3) The department of licensing may enter the lien termination statement on microfilm or other photographic record and destroy all originals of the lien and lien satisfaction filed with him or her. [1991 c 286 § 6; 1986 c 242 § 14.]

Chapter 60.13

PROCESSOR AND PREPARER LIENS FOR AGRICULTURAL PRODUCTS

Sections

60.13.010 Definitions.

60.13.010 Definitions. As used in this chapter, the terms defined in this section have the meanings indicated unless the context clearly requires otherwise.

(1) "Agricultural product" means any unprocessed horticultural, vermicultural and its byproducts, viticultural, berry, poultry, poultry product, grain, bee, or other agricultural products, and includes mint or mint oil processed by or for the producer thereof and hay and straw baled or prepared for market in any manner or form and livestock. When used in RCW 60.13.020, "agricultural product" means horticultural, viticultural, aquacultural, or berry products, hay and straw, milk and milk products, or turf and forage seed and applies only when such products are delivered to a processor or conditioner in an unprocessed form.

(2) "Conditioner," "consignor," "person," and "producer" have the meanings defined in RCW 20.01.010.

(3) "Delivers" means that a producer completes the performance of all contractual obligations with reference to the transfer of actual or constructive possession or

control of an agricultural product to a processor or conditioner or preparer, regardless of whether the processor or conditioner or preparer takes physical possession.

(4) "Preparer" means a person engaged in the business of feeding livestock or preparing livestock products for market.

(5) "Processor" means any person, firm, company, or other organization that purchases agricultural products except milk and milk products from a consignor and that cans, freezes, dries, dehydrates, cooks, presses, powders, or otherwise processes those crops in any manner whatsoever for eventual resale, or that purchases or markets milk from a dairy producer and is obligated to remit payment to such dairy producer directly.

(6) "Commercial fisherman" means a person licensed to fish commercially for or to take food fish or shellfish or steelhead legally caught pursuant to executive order, treaty right, or federal statute.

(7) "Fish" means food fish or shellfish or steelhead legally caught pursuant to executive order, treaty right, or federal statute. [1991 c 174 § 2; 1987 c 148 § 1; 1985 c 412 § 1.]

Chapter 60.20

LABOR AND MATERIAL LIENS FOR IMPROVING PROPERTY WITH NURSERY STOCK

Sections

60.20.010 through 60.20.060 Repealed. (Effective April 1, 1992.)

60.20.010 through 60.20.060 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 60.24

LIEN FOR LABOR AND SERVICES ON TIMBER AND LUMBER

Sections

60.24.033 Lien on real property for labor or services on timber and lumber. (Effective April 1, 1992.)

60.24.033 Lien on real property for labor or services on timber and lumber. (Effective April 1, 1992.) The lot tract, parcel of land, or any other type of real property or real property improvements upon which the type of activities listed in RCW 60.24.020, 60.24.030, or 60.24.035 are to be performed, or so much property thereof as may be necessary to satisfy the lien and the judgment thereon, to be determined by the court on rendering judgment in a foreclosure of lien, shall also be subject to the lien to the extent of its interest of the persons who in their own behalf, or through any of their agents, caused any of the types of activities listed in RCW 60.24.020, 60.24.030, or 60.24.035. [1986 c 179 § 1. Formerly RCW 60.04.045.]

Chapter 60.48

LIEN FOR ENGINEERING SERVICES

Sections

60.48.010 Repealed. (Effective April 1, 1992.)
60.48.020 Repealed. (Effective April 1, 1992.)

60.48.010 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

60.48.020 Repealed. (Effective April 1, 1992.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 60.72

LANDLORD'S LIEN FOR RENT

Sections

60.72.010 Liens created—Priority—Extent—Exceptions.

60.72.010 Liens created—Priority—Extent—Exceptions. Any person to whom rent may be due, his or her executors, administrators, or assigns, shall have a lien for such rent upon personal property which has been used or kept on the rented premises by the tenant, except property of third persons delivered to or left with the tenant for storage, repair, manufacture, or sale, or under conditional bills of sale duly filed, and such property as is exempt from execution by law. Such liens for rent shall be paramount to, and have preference over, all other liens except liens for taxes, general and special liens of labor, and liens of mortgages duly recorded prior to the tenancy. Such liens shall not be for more than two months' rent due, except that a lien for up to four months' rent due may be established when the tenant is renting a mobile home lot in a mobile home park as defined in RCW 59.20.030. No lien may be enforced for any rent or any installment thereof which has been due for more than two months at the time of the commencement of an action to foreclose such liens, except that a lien may be enforced for rent due for up to four months at the time of the commencement of an action to foreclose the lien when the tenant is renting a mobile home lot in a mobile home park as defined in RCW 59.20.030. No writing or recording shall be necessary to create such lien; and if such property be removed from the rented premises and not returned to the owner, agent, executor, administrator, or assign, the lien shall continue and be a superior lien on the property so removed for ten days from the date of its removal, and the lien may be enforced against the property wherever found. In the event the property contained in the rented premises be destroyed by fire or other elements, the lien shall extend to any money that may be received by the tenant as indemnity for the destruction of the property, nor shall the lien be lost by the sale of the property, except merchandise sold in the usual course of trade or to purchasers without notice of the tenancy. The provisions of this chapter shall not apply to, nor shall it be enforced against, the property of tenants in dwelling houses or

apartments or any other place that is used exclusively as a home or residence of the tenant and his or her family. [1990 c 169 § 3; 1927 c 108 § 1; 1917 c 165 § 1; RRS § 1203-1. Formerly RCW 60.72.010, 60.72.020, 60.72.030.]

Title 61

MORTGAGES, DEEDS OF TRUST, AND REAL ESTATE CONTRACTS

Chapters

61.24 Deeds of trust.

Chapter 61.24

DEEDS OF TRUST

Sections

61.24.010	"Record," "recorded" defined—Trustee, qualifications—Successor trustee.
61.24.030	Requisites to foreclosure.
61.24.100	Deficiency decree precluded in foreclosure under this chapter—Enforcement of security and obligation where foreclosure not made under this chapter.

61.24.010 "Record," "recorded" defined—Trustee, qualifications—Successor trustee. (1) The terms "record" and "recorded" as used in this chapter, shall include the appropriate registration proceedings, in the instance of registered land.

(2) The trustee of a deed of trust under this chapter shall be:

(a) Any domestic corporation incorporated under Title 23B, 30, 31, 32, or 33 RCW; or

(b) Any title insurance company authorized to insure title to real property under the laws of this state, or its agents; or

(c) Any attorney who is an active member of the Washington state bar association at the time he is named trustee; or

(d) Any professional corporation incorporated under chapter 18.100 RCW, all of whose shareholders are licensed attorneys; or

(e) Any agency or instrumentality of the United States government; or

(f) Any national bank, savings bank, or savings and loan association chartered under the laws of the United States.

(3) The trustee shall resign at the request of the beneficiary and may resign at its own election. Upon the resignation, incapacity, disability, or death of the trustee, the beneficiary shall nominate in writing a successor trustee. Upon recording in the mortgage records of the county or counties in which the trust deed is recorded, of the appointment of a successor trustee, the successor trustee shall be vested with all powers of the original trustee. [1991 c 72 § 58; 1987 c 352 § 1; 1981 c 161 § 1; 1975 1st ex.s. c 129 § 1; 1965 c 74 § 1.]

61.24.030 Requisites to foreclosure. It shall be requisite, to foreclosure under this chapter:

(1) That the deed of trust contains a power of sale;

(2) That the deed of trust provides in its terms that the real property conveyed is not used principally for agricultural or farming purposes;

(3) That a default has occurred in the obligation secured or a covenant of the grantor, which by the terms of the deed of trust makes operative the power to sell;

(4) That no action commenced by the beneficiary of the deed of trust or the beneficiary's successor is now pending to seek satisfaction of an obligation secured by the deed of trust in any court by reason of the grantor's default on the obligation secured: PROVIDED, That (a) the seeking of the appointment of a receiver shall not constitute an action for purposes of this chapter; and (b) if a receiver is appointed, the grantor shall be entitled to any rents or profits derived from property subject to a homestead as defined in RCW 6.13.010. If the deed of trust was not granted to secure an obligation incurred primarily for personal, family, or household purposes, this subsection shall not apply to actions brought to enforce any other lien or security interest granted to secure the obligation secured by the deed of trust being foreclosed;

(5) That the deed of trust has been recorded in each county in which the land or some part thereof is situated; and

(6) That at least thirty days before notice of sale shall be recorded, transmitted or served, written notice of default shall be transmitted by the beneficiary or trustee to the grantor or any successor in interest at his last known address by both first class and either registered or certified mail, return receipt requested, and the beneficiary or trustee shall cause to be posted in a conspicuous place on said premises, a copy of said notice, or personally served on the grantor or his successor in interest. This notice shall contain the following information:

(a) A description of the property which is then subject to the deed of trust;

(b) The book and the page of the book of records wherein the deed of trust is recorded;

(c) That the beneficiary has declared the grantor or any successor in interest to be in default, and a concise statement of the default alleged;

(d) An itemized account of the amount or amounts in arrears if the default alleged is failure to make payments;

(e) An itemized account of all other specific charges, costs or fees that the grantor is or may be obliged to pay to reinstate the deed of trust before the recording of the notice of sale;

(f) The total of subparagraphs (d) and (e) of this subsection, designated clearly and conspicuously as the amount necessary to reinstate the note and deed of trust before the recording of the notice of sale;

(g) That failure to cure said alleged default within thirty days of the date of mailing of the notice, or if personally served, within thirty days of the date of personal service thereof, may lead to recordation, transmittal and publication of a notice of sale, and that the

property described in subparagraph (a) of this subsection may be sold at public auction at a date no less than one hundred twenty days in the future;

(h) That the effect of the recordation, transmittal and publication of a notice of sale will be to (i) increase the costs and fees and (ii) publicize the default and advertise the grantor's property for sale;

(i) That the effect of the sale of the grantor's property by the trustee will be to deprive the grantor or his successor in interest and all those who hold by, through or under him of all their interest in the property described in subsection (a);

(j) That the grantor or any successor in interest has recourse to the courts pursuant to RCW 61.24.130 to contest the alleged default on any proper ground. [1990 c 111 § 1; 1987 c 352 § 2; 1985 c 193 § 3; 1975 1st ex.s. c 129 § 3; 1965 c 74 § 3.]

Application—1985 c 193: See note following RCW 61.24.020.

61.24.100 Deficiency decree precluded in foreclosure under this chapter—Enforcement of security and obligation where foreclosure not made under this chapter. Foreclosure, as in this chapter provided, shall satisfy the obligation secured by the deed of trust foreclosed, regardless of the sale price or fair value, and no deficiency decree or other judgment shall thereafter be obtained on such obligation, except that if such obligation was not incurred primarily for personal, family, or household purposes, such foreclosure shall not preclude any judicial or nonjudicial foreclosure of any other deeds of trust, mortgages, security agreements, or other security interests or liens covering any real or personal property granted to secure such obligation. Where foreclosure is not made under this chapter, the beneficiary shall not be precluded from enforcing the security as a mortgage nor from enforcing the obligation by any means provided by law. [1990 c 111 § 2; 1965 c 74 § 10.]

Title 62A

UNIFORM COMMERCIAL CODE

Articles

- 1** General provisions.
- 3** Commercial paper.
- 4** Bank deposits and collections.
- 4A** Funds transfers.
- 9** Secured transactions; sales of accounts, contract rights and chattel paper.

Article 1

GENERAL PROVISIONS

Sections

62A.1–201 General definitions.

62A.1–201 General definitions. Subject to additional definitions contained in the subsequent Articles of this Title which are applicable to specific Articles or Parts

thereof, and unless the context otherwise requires, in this Title:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Title (RCW 62A.1–205 and RCW 62A.2–208). Whether an agreement has legal consequences is determined by the provisions of this Title, if applicable; otherwise by the law of contracts (RCW 62A.1–103). (Compare "Contract".)

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by

this Title and any other applicable rules of law. (Compare "Agreement".)

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this Title to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" with respect to an instrument, certificated security, or document of title means the person in possession if (a) in the case of an instrument, it is payable to bearer or to the order of the person in possession, (b) in the case of a security, the person in possession is the registered owner, or the security has been indorsed to the person in possession by the registered owner, or the security is in bearer form, or (c) in the case of a document of title, the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government or intergovernmental organization.

(25) A person has "notice" of a fact when (a) he has actual knowledge of it; or

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this Title.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within this Title.

(30) "Person" includes an individual or an organization (See RCW 62A.1-102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (RCW 62A.2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper which is subject to Article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under RCW 62A.2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Article 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (RCW 62A.2-326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (RCW 62A.3-303, RCW 62A.4-208 and RCW 62A.4-209) a person gives "value" for rights if he acquires them

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a pre-existing contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form. [1990 c 228 § 1; 1986 c 35 § 53; 1981 c 41 § 2; 1965 ex.s. c 157 § 1-201.]

Reviser's note: This table indicates the latest comparable former Washington sources of the material contained in the various subsections of RCW 62A.1-201. Complete histories of the former sections are carried in the Revised Code of Washington Disposition Tables.

HEREIN SUBD.	COMPARE FORMER
(1)	RCW:(i) 22.04.585(1) (ii) 62.01.191 (iii) 63.04.755(1) (iv) 81.32.531(1)
(2)	None
(3)	None
(4)	RCW:(i) 30.52.010 (ii) 62.01.191
(5)	RCW 62.01.191
(6)	RCW 81.32.011 ¹
(7)	None
(8)	None
(9)	RCW 61.20.010
(10)	None
(11)	RCW:(i) 63.04.040 (ii) 63.04.720
(12)	None
(13)	RCW 63.04.755(1)
(14)	RCW:(i) 22.04.585(1) (ii) 62.01.191 (iii) 63.04.755(1) (iv) 81.32.531(1)
(15)	RCW 63.04.755(1)
(16)	RCW 63.04.755(1)
(17)	RCW:(i) 22.04.585(1) (ii) 63.04.060 (iii) 63.04.070 (iv) 63.04.755(1)
(18)	None
(19)	RCW:(i) 22.04.585(2) (ii) 23.80.220(2) (iii) 63.04.755(2) (iv) 81.32.531(2)
(20)	RCW:(i) 22.04.585(1) (ii) 62.01.191 (iii) 81.32.531(1)
(21)	None
(22)	None
(23)	RCW 63.04.755(3)
(24)	RCW 62.01.006(5)
(25)	RCW 62.01.056
(26)	None
(27)	None
(28)	RCW:(i) 22.04.585(1) (ii) 23.80.220(1) (iii) 61.20.010 (iv) 62.01.191 (v) 63.04.755(1) (vi) 81.32.531(1)
(29)	None
(30)	RCW:(i) 22.04.585(1) (ii) 23.80.220(1) (iii) 61.20.010

HEREIN SUBD.	COMPARE FORMER
	(iv) 62.01.191
	(v) 63.04.755(1)
	(vi) 81.32.531(1)
(31)	None
(32)	RCW:(i)22.04.585(1)
	(ii) 23.80.220(1)
	(iii) 61.20.010
	(iv) 63.04.755(1)
	(v) 81.32.531(1)
(33)	RCW:(i) 22.04.585(1)
	(ii) 23.80.220(1)
	(iii) 61.20.010
	(iv) 63.04.755(1)
	(v) 81.32.531(1)
(34)	None
(35)	None
(36)	None
(37)	RCW 61.20.010
(38)	None
(39)	None
(40)	None
(41)	None
(42)	None
(43)	None
(44)	RCW:(i) 22.04.585(1)
	(ii) 23.80.220(1)
	(iii) 61.20.010
	(iv) 62.01.025
	(v) 62.01.026
	(vi) 62.01.027
	(vii) 62.01.191
	(viii) 63.04.755(1)
	(ix) 81.32.531(1)
(45)	RCW:(i) 22.04.020
	(ii) 63.04.755(1)
(46)	RCW 62.01.191

¹The repeal of RCW sections 81.32.010 through 81.32.561 ". . . shall not affect the validity of sections 81.29.010 through 81.29.050, chapter 14, Laws of 1961 (RCW 81.29.010 through 81.29.050)." Section 10-102(a)(xvii), chapter 157, Laws of 1965 ex. sess.

Effective date—1981 c 41: See RCW 62A.11-101.

Definitions—Uniform Act for Simplification of Fiduciary Security Transfer: RCW 21.17.010.

Article 3

COMMERCIAL PAPER

Sections

- 62A.3-512 Credit cards—As identification—In lieu of deposit.
- 62A.3-515 Checks dishonored by nonacceptance or nonpayment; liability for interest; rate; collection costs and attorneys fees; satisfaction of claim.
- 62A.3-520 Statutory form for notice of dishonor.

62A.3-512 Credit cards—As identification—In lieu of deposit. No person may record the number of a credit card given as identification under RCW 62A.3-505(1)(b) or given as proof of credit worthiness when payment for goods or services is made by check or draft. Nothing in this section prohibits the recording of the number of a credit card given in lieu of a deposit to secure payment in the event of a default, loss, damage, or other occurrence. [1990 c 203 § 2.]

62A.3-515 Checks dishonored by nonacceptance or nonpayment; liability for interest; rate; collection costs and attorneys fees; satisfaction of claim. (1) Whenever a

check as defined in RCW 62A.3-104 has been dishonored by nonacceptance or nonpayment the payee or holder of the check is entitled to collect a reasonable handling fee for each such instrument. When such check has not been paid within fifteen days and after the holder of such check sends such notice of dishonor as provided by RCW 62A.3-520 to the drawer at his or her last known address, then if the instrument does not provide for the payment of interest, or collection costs and attorneys fees, the drawer of such instrument shall also be liable for payment of interest at the rate of twelve percent per annum from the date of dishonor and cost of collection not to exceed forty dollars or the face amount of the check, whichever is the lesser. In addition, in the event of court action on the check the court, after such notice and the expiration of said fifteen days, shall award a reasonable attorneys fee, and three times the face amount of the check or three hundred dollars, whichever is less, as part of the damages payable to the holder of the check. This section shall not apply to any instrument which has been dishonored by reason of any justifiable stop payment order.

(2)(a) Subsequent to the commencement of the action but prior to the hearing, the defendant may tender to the plaintiff as satisfaction of the claim, an amount of money equal to the sum of the amount of the check, a reasonable handling fee, accrued interest, collection costs equal to the face amount of the check not to exceed forty dollars, and the incurred court and service costs.

(b) Nothing in this section precludes the right to commence action in any court under chapter 12.40 RCW for small claims. [1991 c 168 § 1; 1986 c 128 § 1; 1981 c 254 § 1; 1969 c 62 § 1; 1967 ex.s. c 23 § 1.]

Savings—Severability—1967 ex.s. c 23: See notes following RCW 19.52.005.

62A.3-520 Statutory form for notice of dishonor. The notice of dishonor shall be sent by mail to the drawer at his or her last known address, and said notice shall be substantially in the following form:

NOTICE OF DISHONOR OF CHECK

A check drawn by you and made payable by you to _____ in the amount of _____ has not been accepted for payment by _____, which is the drawee bank designated on your check. This check is dated _____, and it is numbered, No. _____.

You are CAUTIONED that unless you pay the amount of this check within fifteen days after the date this letter is postmarked, you may very well have to pay the following additional amounts:

(1) Costs of collecting the amount of the check, including an attorney's fee which will be set by the court;

(2) Interest on the amount of the check which shall accrue at the rate of twelve percent per annum from the date of dishonor; and

(3) Three hundred dollars or three times the face amount of the check, whichever is less, by award of the court.

You are also CAUTIONED that law enforcement agencies may be provided with a copy of this notice of

dishonor and the check drawn by you for the possibility of proceeding with criminal charges if you do not pay the amount of this check within fifteen days after the date this letter is postmarked.

You are advised to make your payment to ----- at the following address: ----- [1991 c 168 § 2; 1986 c 128 § 2; 1981 c 254 § 2; 1969 c 62 § 2.]

Article 4

BANK DEPOSITS AND COLLECTIONS

Sections

62A.4-406 Customer's duty to discover and report unauthorized signature or alteration.

62A.4-406 Customer's duty to discover and report unauthorized signature or alteration. (1) When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his or her unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.

(2) If the bank establishes that the customer failed with respect to an item to comply with the duties imposed on the customer by subsection (1) of this section the customer is precluded from asserting against the bank:

(a) His or her unauthorized signature or any alteration on the item if the bank also establishes that it suffered a loss by reason of such failure; and

(b) An unauthorized signature or alteration by the same wrong-doer on any other item paid in good faith by the bank after the first item and statement was available to the customer for a reasonable period and before the bank receives notification from the customer of any such unauthorized signature or alteration.

(3) The preclusion under subsection (2) of this section does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item(s).

(4) Without regard to care or lack of care of either the customer or the bank, a natural person whose account is primarily for personal, family, or household purposes who does not within one year and any other customer who does not within sixty days from the time the statement and items are made available to the customer (subsection (1) of this section) discover and report his or her unauthorized signature or any alteration on the face or back of the item or does not within three years from that time discover and report any unauthorized indorsement is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration.

(5) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting

from payment of an item and waives or fails upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim. [1991 1st sp.s. c 19 § 1; 1967 c 114 § 1; 1965 ex.s. c 157 § 4-406. Cf. former RCW 30.16.020; 1955 c 33 § 30.16.020; prior: 1917 c 80 § 45; RRS § 3252.]

Emergency—Effective date—1967 c 114. "This 1967 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 sections 1 through 11 and 13 through 16 shall take effect on June 30, 1967, and section 12 shall take effect immediately." [1967 c 114 § 17.]

Reviser's note: Sections 1 through 11 and 13 through 16 are codified as RCW 15.48.270, 15.48.280, 15.48.290, 62A.2-403, 62A.2-706, 62A.4-406, 62A.6-102, 62A.6-109, 62A.9-302, 62A.9-403, 62A.9-404, 62A.9-405, 62A.9-406, 62A.9-407 and 62A.9-408. Section 12 is codified as RCW 62A.9-409.

Article 4A

FUNDS TRANSFERS

Sections

PART 1

SUBJECT MATTER AND DEFINITIONS

- 62A.4A-101 Short title.
- 62A.4A-102 Subject matter.
- 62A.4A-103 Payment order—Definitions.
- 62A.4A-104 Funds transfer—Definitions.
- 62A.4A-105 Other definitions.
- 62A.4A-106 Time payment order is received.
- 62A.4A-107 Federal reserve regulations and operating circulars.
- 62A.4A-108 Exclusion of consumer transactions governed by federal law.

PART 2

ISSUE AND ACCEPTANCE OF PAYMENT ORDER

- 62A.4A-201 Security procedure.
- 62A.4A-202 Authorized and verified payment orders.
- 62A.4A-203 Unenforceability of certain verified payment orders.
- 62A.4A-204 Refund of payment and duty of customer to report with respect unauthorized payment order.
- 62A.4A-205 Erroneous payment orders.
- 62A.4A-206 Transmission of payment order through funds-transfer or other communication system.
- 62A.4A-207 Misdescription of beneficiary.
- 62A.4A-208 Misdescription of intermediary bank or beneficiary's bank.
- 62A.4A-209 Acceptance of payment order.
- 62A.4A-210 Rejection of payment order.
- 62A.4A-211 Cancellation and amendment of payment order.
- 62A.4A-212 Liability and duty of receiving bank regarding unaccepted payment order.

PART 3

EXECUTION OF SENDER'S PAYMENT ORDER BY RECEIVING BANK

- 62A.4A-301 Execution and execution date.
- 62A.4A-302 Obligations of receiving bank in execution of payment order.
- 62A.4A-303 Erroneous execution of payment order.
- 62A.4A-304 Duty of sender to report erroneously executed payment order.
- 62A.4A-305 Liability for late or improper execution or failure to execute payment order.

PART 4 PAYMENT

- 62A.4A-401 Payment date.

- 62A.4A-402 Obligation of sender to pay receiving bank.
 62A.4A-403 Payment by sender to receiving bank.
 62A.4A-404 Obligation of beneficiary's bank to pay and give notice to beneficiary.
 62A.4A-405 Payment by beneficiary's bank to beneficiary.
 62A.4A-406 Payment by originator to beneficiary; discharge of underlying obligation.

PART 5

MISCELLANEOUS PROVISIONS

- 62A.4A-501 Variation by agreement and effect of funds-transfer system rule.
 62A.4A-502 Creditor process served on receiving bank; setoff by beneficiary's bank.
 62A.4A-503 Injunction or restraining order with respect to funds transfer.
 62A.4A-504 Order in which items and payment orders may be charged to account; order of withdrawals from account.
 62A.4A-505 Preclusion of objection to debit of customer's account.
 62A.4A-506 Rate of interest.
 62A.4A-507 Choice of law.

PART 1

SUBJECT MATTER AND DEFINITIONS

62A.4A-101 Short title. This Article may be cited as the Uniform Commercial Code—Funds Transfers. [1991 1st sp.s. c 21 § 4A-101.]

62A.4A-102 Subject matter. Except as otherwise provided in RCW 62A.4A-108 this Article applies to funds transfers defined in RCW 62A.4A-104. [1991 1st sp.s. c 21 § 4A-102.]

62A.4A-103 Payment order—Definitions. (1) In this Article:

(a) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) The instruction does not state a condition of payment to the beneficiary other than time of payment;

(ii) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(iii) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

(b) "Beneficiary" means the person to be paid by the beneficiary's bank.

(c) "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(d) "Receiving bank" means the bank to which the sender's instruction is addressed.

(e) "Sender" means the person giving the instruction to the receiving bank.

(2) If an instruction complying with subsection (1)(a) of this section is to make more than one payment to a

beneficiary, the instruction is a separate payment order with respect to each payment.

(3) A payment order is issued when it is sent to the receiving bank. [1991 1st sp.s. c 21 § 4A-103.]

62A.4A-104 Funds transfer—Definitions. In this Article:

(1) "Funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

(2) "Intermediary bank" means a receiving bank other than the originator's bank or the beneficiary's bank.

(3) "Originator" means the sender of the first payment order in a funds transfer.

(4) "Originator's bank" means (a) the receiving bank to which the payment order of the originator is issued if the originator is not a bank, or (b) the originator if the originator is a bank. [1991 1st sp.s. c 21 § 4A-104.]

62A.4A-105 Other definitions. (1) In this Article:

(a) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of the account.

(b) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this Article.

(c) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(d) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(e) "Funds-transfer system" means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(f) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(g) "Prove" with respect to a fact means to meet the burden of establishing the fact (RCW 62A.1-201(8)).

(2) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance"	RCW 62A.4A-209
"Beneficiary"	RCW 62A.4A-103

"Beneficiary's bank"	RCW 62A.4A-103
"Executed"	RCW 62A.4A-301
"Execution date"	RCW 62A.4A-301
"Funds transfer"	RCW 62A.4A-104
"Funds-transfer system rule"	RCW 62A.4A-501
"Intermediary bank"	RCW 62A.4A-104
"Originator"	RCW 62A.4A-104
"Originator's bank"	RCW 62A.4A-104
"Payment by beneficiary's bank to beneficiary"	RCW 62A.4A-405
"Payment by originator to beneficiary"	RCW 62A.4A-406
"Payment by sender to receiving bank"	RCW 62A.4A-403
"Payment date"	RCW 62A.4A-401
"Payment order"	RCW 62A.4A-103
"Receiving bank"	RCW 62A.4A-103
"Security procedure"	RCW 62A.4A-201
"Sender"	RCW 62A.4A-103

(3) The following definitions in Article 4 (RCW 62A.4-101 through 62A.4-504) apply to this Article:

"Clearing house"	*section 4-104 of this act
"Item"	*section 4-104 of this act
"Suspends payments"	*sections 4-104 of this act

(4) In addition to Article 1 [In addition, Article 1] (RCW 62A.1-101 through 62A.1-208) contains general definitions and principles of construction and interpretation applicable throughout this Article. [1991 1st sp.s. c 21 § 4A-105.]

*Reviser's note: The references to "section 4-104 of this act" are incorrect. RCW 62A.4-104 was apparently intended.

62A.4A-106 Time payment order is received. (1) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in RCW 62A.1-201(27). A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(2) If this Article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this Article. [1991 1st sp.s. c 21 § 4A-106.]

62A.4A-107 Federal reserve regulations and operating circulars. Regulations of the board of governors of the federal reserve system and operating circulars of the federal reserve banks supersede any inconsistent provision of this Article to the extent of the inconsistency. [1991 1st sp.s. c 21 § 4A-107.]

62A.4A-108 Exclusion of consumer transactions governed by federal law. This Article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, P.L. 95-630, 92 Stat. 3728, 15 U.S.C. Sec. 1693 et seq.) as amended from time to time. [1991 1st sp.s. c 21 § 4A-108.]

PART 2 ISSUE AND ACCEPTANCE OF PAYMENT ORDER

62A.4A-201 Security procedure. "Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of (1) verifying that a payment order or communication amending or canceling a payment order is that of the customer, or (2) detecting error in the transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure. [1991 1st sp.s. c 21 § 4A-201.]

62A.4A-202 Authorized and verified payment orders. (1) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(2) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (a) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (b) the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(3) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders

normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (a) the security procedure was chosen [by] the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (b) the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in its name, and accepted by the bank in compliance with the security procedure chosen by the customer.

(4) The term "sender" in this Article includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (1) of this section, or it is effective as the order of the customer under subsection (2) of this section.

(5) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(6) Except as provided in this section and RCW 62A.4A-203(1)(a), rights and obligations arising under this section or RCW 62A.4A-203 may not be varied by agreement. [1991 1st sp.s. c 21 § 4A-202.]

62A.4A-203 Unenforceability of certain verified payment orders. (1) If an accepted payment order is not, under RCW 62A.4A-201(1), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to RCW 62A.4A-202(2), the following rules apply.

(a) By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(b) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person (i) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure, or (ii) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or the like.

(2) This section applies to amendments of payment orders to the same extent it applies to payment orders. [1991 1st sp.s. c 21 § 4A-203.]

62A.4A-204 Refund of payment and duty of customer to report with respect unauthorized payment order.

(1) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (a) not authorized and not effective as the order of the customer under RCW 62A.4A-202, or (b) not enforceable, in whole or in part, against the customer under RCW 62A.4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay

interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(2) Reasonable time under subsection (1) of this section may be fixed by agreement as stated in RCW 62A.1-204(1), but the obligation of a receiving bank to refund payment as stated in subsection (1) may not otherwise be varied by agreement. [1991 1st sp.s. c 21 § 4A-204.]

62A.4A-205 Erroneous payment orders. (1) If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order (a) erroneously instructed payment to a beneficiary not intended by the sender, (b) erroneously instructed payment in an amount greater than the amount intended by the sender, or (c) was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

(i) If the sender proves that the sender or a person acting on behalf of the sender pursuant to RCW 62A.4A-206 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in (ii) and (iii) of this subsection.

(ii) If the funds transfer is completed on the basis of an erroneous payment order described in (b) or (c) of this subsection, the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(iii) If the funds transfer is completed on the basis of a payment order described in (b) of this subsection, the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(2) If (a) the sender of an erroneous payment order described in subsection (1) of this section is not obliged to pay all or part of the order, and (b) the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding ninety

days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(3) This section applies to amendments to payment orders to the same extent it applies to payment orders. [1991 1st sp.s. c 21 § 4A-205.]

62A.4A-206 Transmission of payment order through funds-transfer or other communication system. (1) If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the federal reserve banks.

(2) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders. [1991 1st sp.s. c 21 § 4A-206.]

62A.4A-207 Misdescription of beneficiary. (1) Subject to subsection (2) of this section, if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(2) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(a) Except as otherwise provided in subsection (3) of this section, if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

(b) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(3) If (a) a payment order described in subsection (2) of this section is accepted, (b) the originator's payment order described the beneficiary inconsistently by name and number, and (c) the beneficiary's bank pays the person identified by number as permitted by subsection (2)(a) of this section, the following rules apply:

(i) If the originator is a bank, the originator is obliged to pay its order.

(ii) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(4) In a case governed by subsection (2)(a) of this section, if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(a) If the originator is obliged to pay its payment order as stated in subsection (3) of this section, the originator has the right to recover.

(b) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover. [1991 1st sp.s. c 21 § 4A-207.]

62A.4A-208 Misdescription of intermediary bank or beneficiary's bank. (1) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number.

(a) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(b) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

(a) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely

on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (2)(a) of this section, as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(c) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(d) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in RCW 62A.4A-302(1)(a). [1991 1st sp.s. c 21 § 4A-208.]

62A.4A-209 Acceptance of payment order. (1) Subject to subsection (4) of this section, a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(2) Subject to subsections (3) and (4) of this section, a beneficiary's bank accepts a payment order at the earliest of the following times:

(a) When the bank (i) pays the beneficiary as stated in RCW 62A.4A-405 (1) or (2) or (ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

(b) When the bank receives payment of the entire amount of the sender's order pursuant to RCW 62A.4A-403(1) (a) or (b); or

(c) The opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within (i) one hour after that time, or (ii) one hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(3) Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under subsection (2)(b) or (c) of this section if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(4) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank, or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled pursuant to RCW 62A.4A-211(2), the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution. [1991 1st sp.s. c 21 § 4A-209.]

62A.4A-210 Rejection of payment order. (1) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (a) any means complying with the agreement is reasonable and (b) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(2) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to RCW 62A.4A-211(4) or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(3) If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.

(4) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order. [1991 1st sp.s. c 21 § 4A-210.]

62A.4A-211 Cancellation and amendment of payment order. (1) A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(2) Subject to subsection (1) of this section, a communication by the sender canceling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(3) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.

(a) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(b) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order (i) that is a duplicate of a payment order previously issued by the sender, (ii) that orders payment to a beneficiary not entitled to receive payment from the originator, or (iii) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(4) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(5) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(6) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses,

including reasonable attorneys' fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(7) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(8) A funds-transfer system rule is not effective to the extent it conflicts with subsection (3)(b) of this section. [1991 1st sp.s. c 21 § 4A-211.]

62A.4A-212 Liability and duty of receiving bank regarding unaccepted payment order. If a receiving bank fails to accept a payment order that [it] is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this Article, but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action, or refrain from taking action, with respect to the order except as provided in this Article or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in RCW 62A.4A-209 and liability is limited to that provided in this Article. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts, or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this Article or by express agreement. [1991 1st sp.s. c 21 § 4A-212.]

PART 3

EXECUTION OF SENDER'S PAYMENT ORDER BY RECEIVING BANK

62A.4A-301 Execution and execution date. (1) A payment order is "executed" by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank can be accepted but cannot be executed.

(2) "Execution date" of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date. [1991 1st sp.s. c 21 § 4A-301.]

62A.4A-302 Obligations of receiving bank in execution of payment order. (1) Except as provided in subsections (2) through (4) of this section, if the receiving bank accepts a payment order pursuant to RCW 62A.4A-209(1), the bank has the following obligations in executing the order.

(a) The receiving bank is obliged to issue, on the execution date, a payment order complying with the

sender's order and to follow the sender's instructions concerning (i) any intermediary bank or funds-transfer system to be used in carrying out the funds transfer, or (ii) the means by which payment orders are to be transmitted in the funds transfer. If the originator's bank issues a payment order to an intermediary bank, the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts.

(b) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means, and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

(2) Unless otherwise instructed, a receiving bank executing a payment order may (a) use any funds-transfer system if use of that system is reasonable in the circumstances, and (b) issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

(3) Unless subsection (1)(b) of this section applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first class mail or by any means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting its payment order by a particular means, the receiving bank may issue its payment order by the means stated or by any means as expeditious as the means stated.

(4) Unless instructed by the sender, (a) the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges, and (b) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner. [1991 1st sp.s. c 21 § 4A-302.]

62A.4A-303 Erroneous execution of payment order.

(1) A receiving bank that (a) executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order, or (b) issues a payment order in execution of the sender's

order and then issues a duplicate order, is entitled to payment of the amount of the sender's order under RCW 62A.4A-402(3) if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(2) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under RCW 62A.4A-402(3) if (a) that subsection is otherwise satisfied and (b) the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(3) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution. [1991 1st sp.s. c 21 § 4A-303.]

62A.4A-304 Duty of sender to report erroneously executed payment order. If the sender of a payment order that is erroneously executed as stated in RCW 62A.4A-303 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to the sender under RCW 62A.4A-402(4) for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section. [1991 1st sp.s. c 21 § 4A-304.]

62A.4A-305 Liability for late or improper execution or failure to execute payment order. (1) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of RCW 62A.4A-302 results in delay in payment to the beneficiary, the bank

is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (3) of this section, additional damages are not recoverable.

(2) If execution of a payment order by a receiving bank in breach of RCW 62A.4A-302 results in (a) non-completion of the funds transfer, (b) failure to use an intermediary bank designated by the originator, or (c) issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection (1) of this section, resulting from the improper execution. Except as provided in subsection (3) of this section, additional damages are not recoverable.

(3) In addition to the amounts payable under subsections (1) and (2) of this section, damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(4) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

(5) Reasonable attorneys' fees are recoverable if demand for compensation under subsection (1) or (2) of this section is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (4) of this section and the agreement does not provide for damages, reasonable attorneys' fees are recoverable if demand for compensation under subsection (4) of this section is made and refused before an action is brought on the claim.

(6) Except as stated in this section, the liability of a receiving bank under subsections (1) and (2) of this section may not be varied by agreement. [1991 1st sp.s. c 21 § 4A-305.]

PART 4 PAYMENT

62A.4A-401 Payment date. "Payment date" of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank. [1991 1st sp.s. c 21 § 4A-401.]

62A.4A-402 Obligation of sender to pay receiving bank. (1) This section is subject to RCW 62A.4A-205 and 62A.4A-207.

(2) With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(3) This subsection is subject to subsection (5) of this section and to RCW 62A.4A-303. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.

(4) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in RCW 62A.4A-204 and 62A.4A-304, interest is payable on the refundable amount from the date of payment.

(5) If a funds transfer is not completed as stated in this subsection and an intermediary bank is obliged to refund payment as stated in subsection (4) of this section but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in RCW 62A.4A-302(1)(a), to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (4) of this section.

(6) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (3) of this section or to receive refund under subsection (4) of this section may not be varied by agreement. [1991 1st sp.s. c 21 § 4A-402.]

62A.4A-403 Payment by sender to receiving bank.

(1) Payment of the sender's obligation under RCW 62A.4A-402 to pay the receiving bank occurs as follows:

(a) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a federal reserve bank or through a funds-transfer system.

(b) If the sender is a bank and the sender (i) credited an account of the receiving bank with the sender, or (ii) caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.

(c) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when

the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(2) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in the second sentence of this subsection has been exercised.

(3) If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under RCW 62A.4A-402 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank shall be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(4) In a case not covered by subsection (1) of this section, the time when payment of the sender's obligation under RCW 62A.4A-402 (2) or (3) occurs is governed by applicable principles of law that determine when an obligation is satisfied. [1991 1st sp.s. c 21 § 4A-403.]

62A.4A-404 Obligation of beneficiary's bank to pay and give notice to beneficiary. (1) Subject to RCW 62A.4A-211(5), 62A.4A-405(4), and 62A.4A-405(5), if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(2) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer

business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorneys' fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(3) The right of a beneficiary to receive payment and damages as stated in subsection (a) [subsection (1) of this section] may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (2) of this section may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer. [1991 1st sp.s. c 21 § 4A-404.]

62A.4A-405 Payment by beneficiary's bank to beneficiary. (1) If the beneficiary's bank credits an account of the beneficiary of a payment order payment of the bank's obligation under RCW 62A.4A-404(1) occurs when and to the extent (a) the beneficiary is notified of the right to withdraw the credit, (b) the bank lawfully applies the credit to a debt of the beneficiary, or (c) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(2) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under RCW 62A.4A-404(1) occurs is governed by principles of law that determine when an obligation is satisfied.

(3) Except as stated in subsections (4) and (5) of this act [section], if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(4) A funds-transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if (a) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated, (b) the beneficiary, the beneficiary's bank and the originator's bank agreed to be bound by the rule, and (c) the beneficiary's bank did not receive payment of the payment order that it accepted. If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the

originator of the funds transfer to the beneficiary occurs under RCW 62A.4A-406.

(5) This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that (a) nets obligations multilaterally among participants, and (b) has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer, (i) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance, (ii) the beneficiary's bank is entitled to recover payment from the beneficiary, (iii) no payment by the originator to the beneficiary occurs under RCW 62A.4A-406, and (iv) subject to RCW 62A.4A-402(5), each sender in the funds transfer is excused from its obligation to pay its payment order under RCW 62A.4A-402(5), each sender in the funds transfer is excused from its obligation to pay its payment order under RCW 62A.4A-402(3) because the funds transfer has not been completed. [1991 1st sp.s. c 21 § 4A-405.]

62A.4A-406 Payment by originator to beneficiary; discharge of underlying obligation. (1) Subject to RCW 62A.4A-211(5), 62A.4A-405(4), and 62A.4A-405(5), the originator of a funds transfer pays the beneficiary of the originator's payment order (a) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer and (b) in an amount equal to the amount of the order accepted by the beneficiary's bank, but not more than the amount of the originator's order.

(2) If payment under subsection (1) of this section is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless (a) the payment under subsection (1) of this section was made by a means prohibited by the contract of the beneficiary with respect to the obligation, (b) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment, (c) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary, and (d) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract. If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under RCW 62A.4A-404(1).

(3) For the purpose of determining whether discharge of an obligation occurs under subsection (2) of this section, if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks

in the funds transfer, payment to the beneficiary is deemed to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

(4) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary. [1991 1st sp.s. c 21 § 4A-406.]

PART 5 MISCELLANEOUS PROVISIONS

62A.4A-501 Variation by agreement and effect of funds-transfer system rule. (1) Except as otherwise provided in this Article, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(2) "Funds-transfer system rule" means a rule of an association of banks (a) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders, or (b) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a federal reserve bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank. Except as otherwise provided in this Article, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with the Article and indirectly affects another party to the funds transfer who does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in RCW 62A.4A-404(3), 62A.4A-405(4), and 62A.4A-507(3). [1991 1st sp.s. c 21 § 4A-501.]

62A.4A-502 Creditor process served on receiving bank; setoff by beneficiary's bank. (1) As used in this section, "creditor process" means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(2) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at the time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(3) If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

(a) The bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

(b) The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at the time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.

(c) If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

(4) Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other bank served with the creditor process is not obliged to act with respect to the process. [1991 1st sp.s. c 21 § 4A-502.]

62A.4A-503 Injunction or restraining order with respect to funds transfer. For proper cause and in compliance with applicable law, a court may restrain (1) a person from issuing a payment order to initiate a funds transfer, (2) an originator's bank from executing the payment order of the originator, or (3) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds. A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer. [1991 1st sp.s. c 21 § 4A-503.]

62A.4A-504 Order in which items and payment orders may be charged to account; order of withdrawals from account. (1) If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

(2) In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied. [1991 1st sp.s. c 21 § 4A-504.]

62A.4A-505 Preclusion of objection to debit of customer's account. If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank, and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within one year after the notification was received by the customer. [1991 1st sp.s. c 21 § 4A-505.]

62A.4A-506 Rate of interest. (1) If, under this Article, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined (a) by agreement of the sender and receiving bank, or (b) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(2) If the amount of interest is not determined by an agreement or rule as stated in subsection (1) of this section, the amount is calculated by multiplying the applicable federal funds rate by the amount on which interest is payable, and then multiplying the product by the number of days for which interest is payable. The applicable federal funds rate is the average of the federal funds rates published by the federal reserve bank of New York for each of the days for which interest is payable divided by three hundred sixty. The federal funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank. [1991 1st sp.s. c 21 § 4A-506.]

62A.4A-507 Choice of law. (1) The following rules apply unless the affected parties otherwise agree or subsection (3) of this section applies;

(a) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(b) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(c) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(2) If the parties described in each paragraph of subsection (1) of this section have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(3) A funds-transfer system rule may select the law of a particular jurisdiction to govern (a) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or (b) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system. A choice of law made pursuant to (a) of this subsection is binding on participating banks. A choice of law made pursuant to (b) of this subsection is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer

system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(4) In the event of inconsistency between an agreement under subsection (2) of this section and a choice-of-law rule under subsection (3) of this section, the agreement under subsection (2) of this section prevails.

(5) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue. [1991 1st sp.s. c 21 § 4A-507.]

Article 9

SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

Sections

62A.9-310 Priority of certain liens arising by operation of law.

62A.9-310 Priority of certain liens arising by operation of law. (1) When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest only if the lien is statutory and the statute expressly provides for such priority.

(2) A preparer lien or processor lien properly created pursuant to chapter 60.13 RCW or a depositor's lien created pursuant to chapter 22.09 RCW takes priority over any perfected or unperfected security interest.

(3) Conflicting priorities between crop liens created under chapter 60.11 RCW and security interests shall be governed by chapter 60.11 RCW. [1991 c 286 § 7; 1986 c 242 § 16; 1985 c 412 § 10; 1983 c 305 § 76; 1965 ex.s. c 157 § 9-310. Cf. former RCW 61.20.110; 1943 c 71 § 11; Rem. Supp. 1943 § 11548-40.]

Severability—Effective date—1986 c 242: See RCW 60.11.902 and 60.11.903.

Severability—1983 c 305: See note following RCW 20.01.010.

Title 63

PERSONAL PROPERTY

Chapters

63.24 Unclaimed property in hands of bailee.

63.29 Uniform Unclaimed Property Act.

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Chapter 63.24

UNCLAIMED PROPERTY IN HANDS OF BAILEE

Sections

63.24.170 Bailee not liable to owner—Reimbursed for reasonable costs.

63.24.170 Bailee not liable to owner—Reimbursed for reasonable costs. A bailee is not liable to the owner for unclaimed property disposed of in good faith in accordance with the requirements of this chapter. A bailee shall be reimbursed from the proceeds of sale of any unclaimed property disposed of under RCW 63.24.160 for the reasonable costs or charges for any goods or services provided by the bailee regarding the property, and for the costs to provide notice to the owner. [1990 c 41 § 1; 1981 c 154 § 6.]

Chapter 63.29

UNIFORM UNCLAIMED PROPERTY ACT

Sections

63.29.135 Abandoned intangible property held by local government.

63.29.190 Payment or delivery of abandoned property.

63.29.135 Abandoned intangible property held by local government. A local government holding abandoned intangible property that is not forwarded to the department of revenue, as authorized under RCW 63.29.190, shall not be required to maintain current records of this property for longer than five years after the property is presumed to be abandoned, and at that time may archive records of this intangible property and transfer the intangible property to its general fund. However, the local government shall remain liable to pay the intangible property to a person or entity subsequently establishing its ownership of this intangible property. [1990 2nd ex.s. c 1 § 301.]

Applicability—1990 2nd ex.s. c 1: "Any funds covered by RCW 63.29.190 that were received by the state prior to June 6, 1990, shall be retained by the state of Washington, and any such funds not remitted to the state prior to June 6, 1990, may be retained as provided for under RCW 63.29.190." [1990 2nd ex.s. c 1 § 303.]

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

63.29.190 Payment or delivery of abandoned property. (1) Except as otherwise provided in subsections (2) and (3) of this section, a person who is required to file a report under RCW 63.29.170, within six months after the final date for filing the report as required by RCW 63.29.170, shall pay or deliver to the department all abandoned property required to be reported. Counties, cities, towns, and other municipal and quasi-municipal corporations that hold funds representing warrants canceled pursuant to RCW 36.22.100 and 39.56.040, uncashed checks, excess proceeds from property tax and irrigation district foreclosures, and property tax overpayments or refunds may retain the funds until the owner notifies them and establishes ownership as provided in RCW 63.29.135. Counties, cities, towns, or

other municipal or quasi-municipal corporations shall provide to the department a report of property it is holding pursuant to this section. The report shall identify the property and owner in the manner provided in RCW 63.29.170 and the department shall publish the information as provided in RCW 63.29.180.

(2) If the owner establishes the right to receive the abandoned property to the satisfaction of the holder before the property has been delivered or it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property to the department, and the property will no longer be presumed abandoned. In that case, the holder shall file with the department a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

(3) Property reported under RCW 63.29.170 for which the holder is not required to report the name of the apparent owner must be delivered to the department at the time of filing the report.

(4) The holder of an interest under RCW 63.29.100 shall deliver a duplicate certificate or other evidence of ownership if the holder does not issue certificates of ownership to the department. Upon delivery of a duplicate certificate to the department, the holder and any transfer agent, registrar, or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate is relieved of all liability of every kind in accordance with RCW 63.29.200 to every person, including any person acquiring the original certificate or the duplicate of the certificate issued to the department, for any losses or damages resulting to any person by the issuance and delivery to the department of the duplicate certificate. [1991 c 311 § 7; 1990 2nd ex.s. c 1 § 302; 1983 c 179 § 19.]

Severability—1991 c 311: See note following RCW 82.14.310.

Applicability—1990 2nd ex.s. c 1: See note following RCW 63.29.135.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Title 64

REAL PROPERTY AND CONVEYANCES

Chapters

- 64.04** Conveyances.
- 64.34** Condominium act.
- 64.36** Timeshare regulation.
- 64.44** Contaminated properties.

Chapter 64.04 CONVEYANCES

Sections

- 64.04.005 Earnest money deposit—Exclusive remedy—Definition.
- 64.04.175 Easements established by dedication—Extinguishing or altering.

64.04.005 Earnest money deposit—Exclusive remedy—Definition. (1)(a) A provision in a written agreement for the purchase and sale of real estate which provides for the forfeiture of an earnest money deposit to the seller as the seller's sole and exclusive remedy if the purchaser fails, without legal excuse, to complete the purchase, is valid and enforceable, regardless of whether the seller incurs any actual damages, PROVIDED That:

(i) The total earnest money deposit to be forfeited does not exceed five percent of the purchase price; and

(ii) The agreement includes an express provision in substantially the following form: "In the event the purchaser fails, without legal excuse, to complete the purchase of the property, the earnest money deposit made by the purchaser shall be forfeited to the seller as the sole and exclusive remedy available to the seller for such failure."

(b) If the real estate which is the subject of the agreement is being purchased by the purchaser primarily for the purchaser's personal, family, or household purposes, then the agreement provision required by (a)(ii) of this subsection must be:

(i) In typeface no smaller than other text provisions of the agreement; and

(ii) Must be separately initialed or signed by the purchaser and seller.

(2) If an agreement for the purchase and sale of real estate does not satisfy the requirements of subsection (1) of this section, then the seller shall have all rights and remedies otherwise available at law or in equity as a result of the failure of the purchaser, without legal excuse, to complete the purchase.

(3) Nothing in subsection (1) of this section shall affect or limit the rights of any party to an agreement for the purchase and sale of real estate with respect to:

(a) Any cause of action arising from any other breach or default by either party under the agreement; or

(b) The recovery of attorneys' fees in any action commenced with respect to the agreement, if the agreement so provides.

(4) For purposes of this section, "earnest money deposit" means any deposit, deposits, payment, or payments of a part of the purchase price for the property, made in the form of cash, check, promissory note, or other things of value for the purpose of binding the purchaser to the agreement and identified in the agreement as an earnest money deposit, and does not include other deposits or payments made by the purchaser. [1991 c 210 § 1.]

Application—1991 c 210: "The provisions of this act apply only to written agreements entered on or after July 28, 1991." [1991 c 210 § 2.]

64.04.175 Easements established by dedication—Extinguishing or altering. Easements established by a dedication are property rights that cannot be extinguished or altered without the approval of the easement owner or owners, unless the plat or other document creating the dedicated easement provides for an alternative method or methods to extinguish or alter the easement. [1991 c 132 § 1.]

Chapter 64.34
CONDOMINIUM ACT

Sections	
64.34.020	Definitions.
64.34.200	Creation of condominium.
64.34.304	Unit owners' association—Powers.
64.34.352	Insurance.
64.34.354	Insurance—Conveyance.
64.34.360	Common expenses—Assessments.
64.34.364	Lien for assessments.
64.34.372	Association records—Funds.
64.34.400	Applicability—Waiver.
64.34.415	Public offering statement—Conversion condominiums.
64.34.417	Public offering statement—Use of single disclosure document.
64.34.418	Public offering statement—Contract of sale—Restriction on interest conveyed.
64.34.425	Resale of unit.
64.34.440	Conversion condominiums—Notice—Tenants.
64.34.452	Warranties of quality—Breach.

64.34.020 Definitions. In the declaration and bylaws, unless specifically provided otherwise or the context requires otherwise, and in this chapter:

(1) "Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person: (a) Is a general partner, officer, director, or employer of the declarant; (b) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the declarant; (c) controls in any manner the election of a majority of the directors of the declarant; or (d) has contributed more than twenty percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant: (i) Is a general partner, officer, director, or employer of the person; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

(2) "Allocated interests" means the undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit.

(3) "Assessment" means all sums chargeable by the association against a unit including, without limitation: (a) Regular and special assessments for common expenses, charges, and fines imposed by the association; (b) interest and late charges on any delinquent account; and (c) costs of collection, including reasonable attorneys' fees, incurred by the association in connection with the collection of a delinquent owner's account.

(4) "Association" or "unit owners' association" means the unit owners' association organized under RCW 64.34.300.

(5) "Board of directors" means the body, regardless of name, with primary authority to manage the affairs of the association.

(6) "Common elements" means all portions of a condominium other than the units.

(7) "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

(8) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to RCW 64.34.224.

(9) "Condominium" means real property, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real property is not a condominium unless the undivided interests in the common elements are vested in the unit owners, and unless a declaration and a survey map and plans have been recorded pursuant to this chapter.

(10) "Conversion condominium" means a condominium (a) that at any time before creation of the condominium was lawfully occupied wholly or partially by a tenant or subtenant for residential purposes pursuant to a rental agreement, oral or written, express or implied, or (b) that, at any time before the conveyance of, or acceptance of an agreement to convey, any unit therein other than to a declarant or any affiliate of a declarant, was lawfully occupied by a residential tenant of a declarant or an affiliate of a declarant and such tenant was not notified in writing, prior to lawfully occupying a unit or executing a rental agreement, whichever event first occurs, that the unit was part of a condominium and subject to sale. "Conversion condominium" shall not include a condominium in which, before July 1, 1990, any unit therein had been conveyed or been made subject to an agreement to convey to any transferee other than a declarant or an affiliate of a declarant.

(11) "Conveyance" means any transfer of the ownership of a unit, including a transfer by deed or by real estate contract and, with respect to a unit in a leasehold condominium, a transfer by lease or assignment thereof, but shall not include a transfer solely for security.

(12) "Dealer" means a person who owns either six or more units in a condominium or fifty percent or more of the units in a condominium which have not previously been disposed of to any person other than a declarant or a dealer.

(13) "Declarant" means any person or group of persons acting in concert who (a) executes as declarant a declaration as defined in subsection (15) of this section, or (b) reserves or succeeds to any special declarant right under the declaration.

(14) "Declarant control" means the right of the declarant or persons designated by the declarant to appoint and remove officers and members of the board of directors pursuant to RCW 64.34.308 (4) or (5).

(15) "Declaration" means the document, however denominated, that creates a condominium by setting forth

the information required by RCW 64.34.216 and any amendments to that document.

(16) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to: (a) Add real property or improvements to a condominium; (b) create units, common elements, or limited common elements within real property included or added to a condominium; (c) subdivide units or convert units into common elements; or (d) withdraw real property from a condominium.

(17) "Dispose" or "disposition" means a voluntary transfer or conveyance to a purchaser or lessee of any legal or equitable interest in a unit, but does not include the transfer or release of a security interest.

(18) "Eligible mortgagee" means the holder of a mortgage on a unit that has filed with the secretary of the association a written request that it be given copies of notices of any action by the association that requires the consent of the mortgagees.

(19) "Foreclosure" means a forfeiture or judicial or nonjudicial foreclosure of a mortgage or a deed in lieu thereof.

(20) "Identifying number" means a symbol or address that identifies only one unit in a condominium.

(21) "Leasehold condominium" means a condominium in which all or a portion of the real property is subject to a lease, the expiration or termination of which will terminate the condominium or reduce its size.

(22) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of RCW 64.34.204 (2) or (4) for the exclusive use of one or more but fewer than all of the units.

(23) "Master association" means an organization described in RCW 64.34.276, whether or not it is also an association described in RCW 64.34.300.

(24) "Mortgage" means a mortgage, deed of trust or real estate contract.

(25) "Person" means a natural person, corporation, partnership, limited partnership, trust, governmental subdivision or agency, or other legal entity.

(26) "Purchaser" means any person, other than a declarant or a dealer, who by means of a disposition acquires a legal or equitable interest in a unit other than (a) a leasehold interest, including renewal options, of less than twenty years at the time of creation of the unit, or (b) as security for an obligation.

(27) "Real property" means any fee, leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements thereon and easements, rights and interests appurtenant thereto which by custom, usage, or law pass with a conveyance of land although not described in the contract of sale or instrument of conveyance. "Real property" includes parcels, with or without upper or lower boundaries, and spaces that may be filled with air or water.

(28) "Residential purposes" means use for dwelling or recreational purposes, or both.

(29) "Special declarant rights" means rights reserved for the benefit of a declarant to: (a) Complete improvements indicated on survey maps and plans filed with the

declaration under RCW 64.34.232; (b) exercise any development right under RCW 64.34.236; (c) maintain sales offices, management offices, signs advertising the condominium, and models under RCW 64.34.256; (d) use easements through the common elements for the purpose of making improvements within the condominium or within real property which may be added to the condominium under RCW 64.34.260; (e) make the condominium part of a larger condominium or a development under RCW 64.34.276; (f) make the condominium subject to a master association under RCW 64.34.276; or (g) appoint or remove any officer of the association or any master association or any member of the board of directors during any period of declarant control under RCW 64.34.308(3).

(30) "Timeshare" shall have the meaning specified in the timeshare act, RCW 64.36.010(11).

(31) "Unit" means a physical portion of the condominium designated for separate ownership, the boundaries of which are described pursuant to RCW 64.34.216(1)(d). "Separate ownership" includes leasing a unit in a leasehold condominium under a lease that expires contemporaneously with any lease, the expiration or termination of which will remove the unit from the condominium.

(32) "Unit owner" means a declarant or other person who owns a unit or leases a unit in a leasehold condominium under a lease that expires simultaneously with any lease, the expiration or termination of which will remove the unit from the condominium, but does not include a person who has an interest in a unit solely as security for an obligation. "Unit owner" means the vendee, not the vendor, of a unit under a real estate contract. [1990 c 166 § 1; 1989 c 43 § 1-103.]

Effective date—1990 c 166: "This act shall take effect July 1, 1990." [1990 c 166 § 16.]

64.34.200 Creation of condominium. (1) A condominium may be created pursuant to this chapter only by recording a declaration executed by the owner of the interest subject to this chapter in the same manner as a deed and by simultaneously recording a survey map and plans pursuant to RCW 64.34.232. The declaration and survey map and plans must be recorded in every county in which any portion of the condominium is located, and the condominium shall not have the same name as any other existing condominium, whether created under this chapter or under chapter 64.32 RCW, in any county in which the condominium is located.

(2) A declaration or an amendment to a declaration adding units to a condominium may not be recorded unless (a) all structural components and mechanical systems of all buildings containing or comprising any units thereby created are substantially completed as evidenced by a recorded certificate of completion executed by the declarant, and (b) all horizontal and vertical boundaries of such units are substantially completed in accordance with the plans required to be recorded by RCW 64.34.232, as evidenced by a recorded certificate of completion executed by a licensed surveyor. [1990 c 166 § 2; 1989 c 43 § 2-101.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.304 Unit owners' association—Powers. (1) Except as provided in subsection (2) of this section, and subject to the provisions of the declaration, the association may:

(a) Adopt and amend bylaws, rules, and regulations;
 (b) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from unit owners;

(c) Hire and discharge or contract with managing agents and other employees, agents, and independent contractors;

(d) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;

(e) Make contracts and incur liabilities;
 (f) Regulate the use, maintenance, repair, replacement, and modification of common elements;
 (g) Cause additional improvements to be made as a part of the common elements;

(h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, but common elements may be conveyed or subjected to a security interest only pursuant to RCW 64.34.348;

(i) Grant easements, leases, licenses, and concessions through or over the common elements and petition for or consent to the vacation of streets and alleys;

(j) Impose and collect any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in RCW 64.34.204 (2) and (4), and for services provided to unit owners;

(k) Impose and collect charges for late payment of assessments pursuant to *RCW 64.34.364(10) and, after notice and an opportunity to be heard by the board of directors or by such representative designated by the board of directors and in accordance with such procedures as provided in the declaration or bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule thereof adopted by the board of directors and furnished to the owners for violations of the declaration, bylaws, and rules and regulations of the association;

(l) Impose and collect reasonable charges for the preparation and recording of amendments to the declaration, resale certificates required by RCW 64.34.425, and statements of unpaid assessments;

(m) Provide for the indemnification of its officers and board of directors and maintain directors' and officers' liability insurance;

(n) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration provides;

(o) Exercise any other powers conferred by the declaration or bylaws;

(p) Exercise all other powers that may be exercised in this state by the same type of corporation as the association; and

(q) Exercise any other powers necessary and proper for the governance and operation of the association.

(2) The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons. [1990 c 166 § 3; 1989 c 43 § 3-102.]

*Reviser's note: RCW 64.34.364 was amended by 1990 c 166 § 6, and the previous subsection (10) was renumbered as subsection (13).

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.352 Insurance. (1) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(a) Property insurance on the condominium, which may, but need not, include equipment, improvements, and betterments in a unit installed by the declarant or the unit owners, insuring against all risks of direct physical loss commonly insured against or, in the case of a *conversion building, against fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent, or such greater amount specified in the declaration, of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(b) Liability insurance, including medical payments insurance, in an amount determined by the board of directors but not less than the amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(2) If the insurance described in subsection (1) of this section is not reasonably available, or is modified, canceled, or not renewed, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by first class United States mail to all unit owners, to each eligible mortgagee, and to each mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the unit owners.

(3) Insurance policies carried pursuant to subsection (1) of this section shall provide that:

(a) Each unit owner is an insured person under the policy with respect to liability arising out of the owner's interest in the common elements or membership in the association;

(b) The insurer waives its right to subrogation under the policy against any unit owner, member of the owner's household, and lessee of the owner;

(c) No act or omission by any unit owner, unless acting within the scope of the owner's authority on behalf

of the association, will void the policy or be a condition to recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

(4) Any loss covered by the property insurance under subsection (1)(a) of this section must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any holder of a mortgage. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions of subsection (7) of this section, the proceeds must be disbursed first for the repair or restoration of the damaged property, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the condominium is terminated.

(5) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for the owner's own benefit.

(6) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any unit owner or holder of a mortgage. The insurer issuing the policy may not modify the amount or the extent of the coverage of the policy or cancel or refuse to renew the policy unless the insurer has complied with all applicable provisions of chapter 48.18 RCW pertaining to the cancellation or nonrenewal of contracts of insurance. The insurer shall not modify the amount or the extent of the coverage of the policy, or cancel or refuse to renew the policy without complying with this section.

(7) Any portion of the condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless: (a) The condominium is terminated; (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (c) eighty percent of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If all of the damaged or destroyed portions of the condominium are not repaired or replaced: (i) The insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium; (ii) the insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders, as their interests may appear; and (iii) the remainder of the proceeds shall be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to the common element interests of all the

units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under RCW 64.34.060(1), and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, RCW 64.34.268 governs the distribution of insurance proceeds if the condominium is terminated.

(8) The provisions of this section may be varied or waived as provided in the declaration if all units of a condominium are restricted to nonresidential use. [1990 c 166 § 4; 1989 c 43 § 3-114.]

***Reviser's note:** The term "conversion building" was changed to "conversion condominium" by 1990 c 166.

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.354 Insurance—Conveyance. Promptly upon the conveyance of a unit, the new unit owner shall notify the association of the date of the conveyance and the unit owner's name and address. The association shall notify each insurance company that has issued an insurance policy to the association for the benefit of the owners under RCW 64.34.352 of the name and address of the new owner and request that the new owner be made a named insured under such policy. [1990 c 166 § 8.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.360 Common expenses—Assessments. (1) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments must be made against all units, based on a budget adopted by the association.

(2) Except for assessments under subsections (3), (4), and (5) of this section, all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to RCW 64.34.224(1). Any past due common expense assessment or installment thereof bears interest at the rate established by the association pursuant to RCW 64.34.364.

(3) To the extent required by the declaration:

(a) Any common expense associated with the operation, maintenance, repair, or replacement of a limited common element shall be paid by the owner of or assessed against the units to which that limited common element is assigned, equally, or in any other proportion that the declaration provides;

(b) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited;

(c) The costs of insurance must be assessed in proportion to risk; and

(d) The costs of utilities must be assessed in proportion to usage.

(4) Assessments to pay a judgment against the association pursuant to RCW 64.34.368(1) may be made only against the units in the condominium at the time the judgment was entered in proportion to their allocated common expense liabilities at the time the judgment was entered.

(5) To the extent that any common expense is caused by the misconduct of any unit owner, the association may assess that expense against the owner's unit.

(6) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities. [1990 c 166 § 5; 1989 c 43 § 3-116.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.364 Lien for assessments. (1) The association has a lien on a unit for any unpaid assessments levied against a unit from the time the assessment is due.

(2) A lien under this section shall be prior to all other liens and encumbrances on a unit except: (a) Liens and encumbrances recorded before the recording of the declaration; (b) a mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and (c) liens for real property taxes and other governmental assessments or charges against the unit. A lien under this section is not subject to the provisions of chapter 6.13 RCW.

(3) Except as provided in subsections (4) and (5) of this section, the lien shall also be prior to the mortgages described in subsection (2)(b) of this section to the extent of assessments for common expenses, excluding any amounts for capital improvements, based on the periodic budget adopted by the association pursuant to RCW 64.34.360(1) which would have become due during the six months immediately preceding the date of a sheriff's sale in an action for judicial foreclosure by either the association or a mortgagee, the date of a trustee's sale in a nonjudicial foreclosure by a mortgagee, or the date of recording of the declaration of forfeiture in a proceeding by the vendor under a real estate contract.

(4) The priority of the association's lien against units encumbered by a mortgage held by an eligible mortgagee or by a mortgagee which has given the association a written request for a notice of delinquent assessments shall be reduced by up to three months if and to the extent that the lien priority under subsection (3) of this section includes delinquencies which relate to a period after such holder becomes an eligible mortgagee or has given such notice and before the association gives the holder a written notice of the delinquency. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

(5) If the association forecloses its lien under this section nonjudicially pursuant to chapter 61.24 RCW, as provided by subsection (9) of this section, the association shall not be entitled to the lien priority provided for under subsection (3) of this section.

(6) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

(7) Recording of the declaration constitutes record notice and perfection of the lien for assessments. While no further recording of any claim of lien for assessment

under this section shall be required to perfect the association's lien, the association may record a notice of claim of lien for assessments under this section in the real property records of any county in which the condominium is located. Such recording shall not constitute the written notice of delinquency to a mortgagee referred to in subsection (2) of this section.

(8) A lien for unpaid assessments and the personal liability for payment of assessments is extinguished unless proceedings to enforce the lien or collect the debt are instituted within three years after the amount of the assessments sought to be recovered becomes due.

(9) The lien arising under this section may be enforced judicially by the association or its authorized representative in the manner set forth in chapter 61.12 RCW. The lien arising under this section may be enforced nonjudicially in the manner set forth in chapter 61.24 RCW for nonjudicial foreclosure of deeds of trust if the declaration (a) contains a grant of the condominium in trust to a trustee qualified under RCW 61.24.010 to secure the obligations of the unit owners to the association for the payment of assessments, (b) contains a power of sale, (c) provides in its terms that the units are not used principally for agricultural or farming purposes, and (d) provides that the power of sale is operative in the case of a default in the obligation to pay assessments. The association or its authorized representative shall have the power, unless prohibited by the declaration, to purchase the unit at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. Nothing in this section shall prohibit an association from taking a deed in lieu of foreclosure.

(10) From the time of commencement of an action by the association to foreclose a lien for nonpayment of delinquent assessments against a unit that is not occupied by the owner thereof, the association shall be entitled to the appointment of a receiver to collect from the lessee thereof the rent for the unit as and when due. If the rental is not paid, the receiver may obtain possession of the unit, refurbish it for rental up to a reasonable standard for rental units in this type of condominium, rent the unit or permit its rental to others, and apply the rents first to the cost of the receivership and attorneys' fees thereof, then to the cost of refurbishing the unit, then to applicable charges, then to costs, fees, and charges of the foreclosure action, and then to the payment of the delinquent assessments. Only a receiver may take possession and collect rents under this subsection, and a receiver shall not be appointed less than ninety days after the delinquency. The exercise by the association of the foregoing rights shall not affect the priority of preexisting liens on the unit.

(11) Except as provided in subsection (3) of this section, the holder of a mortgage or other purchaser of a unit who obtains the right of possession of the unit through foreclosure shall not be liable for assessments or installments thereof that became due prior to such right of possession. Such unpaid assessments shall be deemed

to be common expenses collectible from all the unit owners, including such mortgagee or other purchaser of the unit. Foreclosure of a mortgage does not relieve the prior owner of personal liability for assessments accruing against the unit prior to the date of such sale as provided in this subsection.

(12) In addition to constituting a lien on the unit, each assessment shall be the joint and several obligation of the owner or owners of the unit to which the same are assessed as of the time the assessment is due. In a voluntary conveyance, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Suit to recover a personal judgment for any delinquent assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

(13) The association may from time to time establish reasonable late charges and a rate of interest to be charged on all subsequent delinquent assessments or installments thereof. In the absence of another established nonusurious rate, delinquent assessments shall bear interest from the date of delinquency at the maximum rate permitted under RCW 19.52.020 on the date on which the assessments became delinquent.

(14) The association shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent assessments, whether or not such collection activities result in suit being commenced or prosecuted to judgment. In addition, the association shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment.

(15) The association upon written request shall furnish to a unit owner or a mortgagee a statement signed by an officer or authorized agent of the association setting forth the amount of unpaid assessments against that unit. The statement shall be furnished within fifteen days after receipt of the request and is binding on the association, the board of directors, and every unit owner, unless and to the extent known by the recipient to be false.

(16) To the extent not inconsistent with this section, the declaration may provide for such additional remedies for collection of assessments as may be permitted by law. [1990 c 166 § 6; 1989 c 43 § 3-117.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.372 Association records—Funds. (1) The association shall keep financial records sufficiently detailed to enable the association to comply with RCW 64.34.425. All financial and other records shall be made reasonably available for examination by any unit owner and the owner's authorized agents. At least annually, the association shall prepare, or cause to be prepared, a financial statement of the association in accordance with generally accepted accounting principles. The financial statements of condominiums consisting of fifty or more

units shall be audited at least annually by a certified public accountant. In the case of a condominium consisting of fewer than fifty units, an annual audit is also required but may be waived annually by unit owners other than the declarant of units to which sixty percent of the votes are allocated, excluding the votes allocated to units owned by the declarant.

(2) The funds of an association shall not be commingled with the funds of any other association, nor with the funds of any manager of the association or any other person responsible for the custody of such funds. Any reserve funds of an association shall be kept in a segregated account and any transaction affecting such funds, including the issuance of checks, shall require the signature of at least two persons who are officers or directors of the association. [1990 c 166 § 7; 1989 c 43 § 3-119.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.400 Applicability—Waiver. (1) This article applies to all units subject to this chapter, except as provided in subsection (2) of this section and unless and to the extent otherwise agreed to in writing by the seller and purchasers of those units that are restricted to non-residential use in the declaration.

(2) Neither a public offering statement nor a resale certificate need be prepared or delivered in the case of:

- (a) A conveyance by gift, devise, or descent;
- (b) A conveyance pursuant to court order;
- (c) A disposition by a government or governmental agency;
- (d) A conveyance by foreclosure;
- (e) A disposition to a dealer who intends to offer those units to purchasers; or
- (f) A disposition that may be canceled at any time and for any reason by the purchaser without penalty. [1990 c 166 § 9; 1989 c 43 § 4-101.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.415 Public offering statement—Conversion condominiums. (1) The public offering statement of a conversion condominium shall contain, in addition to the information required by RCW 64.34.410:

(a) A statement by the declarant, based on a report prepared by an independent, licensed architect or engineer, describing, to the extent reasonably ascertainable, the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the condominium;

(b) A statement by the declarant of the expected useful life of each item reported on in (a) of this subsection or a statement that no representations are made in that regard; and

(c) A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations. Unless the purchaser waives in writing the curing of specific violations, the extent to which the declarant will cure such violations prior to the closing of the sale of a unit in the condominium shall be included.

(2) This section applies only to condominiums containing units that may be occupied for residential use. [1990 c 166 § 10; 1989 c 43 § 4–104.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.417 Public offering statement—Use of single disclosure document. If a unit is offered for sale for which the delivery of a public offering statement or other disclosure document is required under the laws of any state or the United States, a single disclosure document conforming to the requirements of RCW 64.34.410 and 64.34.415 and conforming to any other requirement imposed under such laws, may be prepared and delivered in lieu of providing two or more disclosure documents. [1990 c 166 § 11.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.418 Public offering statement—Contract of sale—Restriction on interest conveyed. In the case of a sale of a unit where delivery of a public offering statement is required, a contract of sale may be executed, but no interest in that unit may be conveyed until (1) the declaration and survey map and plans which create the condominium in which that unit is located are recorded pursuant to RCW 64.34.200 and 64.34.232 and (2) the unit is substantially completed and available for occupancy, unless the declarant and purchaser have otherwise specifically agreed in writing as to the extent to which the unit will not be substantially completed and available for occupancy at the time of conveyance. [1990 c 166 § 15.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.425 Resale of unit. (1) Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under RCW 64.34.400(2), a unit owner shall furnish to a purchaser before execution of any contract for sale of a unit, or otherwise before conveyance, a copy of the declaration, the bylaws, the rules or regulations of the association, and a certificate, based on the books and records of the association and the actual knowledge of the person signing the certificate, containing:

(a) A statement disclosing the effect on the proposed conveyance of any right of first refusal or other restraint on the free alienability of the unit;

(b) A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner and a statement of any special assessments that have been levied against the unit which have not been paid even though not yet due;

(c) A statement, which shall be current to within forty-five days, of any common expenses or special assessments against any unit in the condominium that are past due over thirty days;

(d) A statement, which shall be current to within forty-five days, of any obligation of the association which is past due over thirty days;

(e) A statement of any other fees payable by unit owners;

(f) A statement of any anticipated repair or replacement cost in excess of five percent of the annual budget of the association that has been approved by the board of directors;

(g) A statement of the amount of any reserves for repair or replacement and of any portions of those reserves currently designated by the association for any specified projects;

(h) The annual financial statement of the association, including the audit report if it has been prepared, for the year immediately preceding the current year.

(i) A balance sheet and a revenue and expense statement of the association prepared on an accrual basis, which shall be current to within one hundred twenty days;

(j) The current operating budget of the association;

(k) A statement of any unsatisfied judgments against the association and the status of any pending suits in which the association is a defendant;

(l) A statement describing any insurance coverage provided for the benefit of unit owners;

(m) A statement as to whether there are any alterations or improvements to the unit or to the limited common elements assigned thereto that violate any provision of the declaration;

(n) A statement of the number of units, if any, still owned by the declarant, whether the declarant has transferred control of the association to the unit owners, and the date of such transfer;

(o) A statement as to whether there are any violations of the health or building codes with respect to the unit, the limited common elements assigned thereto, or any other portion of the condominium;

(p) A statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof; and

(q) Any other information reasonably requested by mortgagees of prospective purchasers of units. Information requested generally by [the] federal national mortgage association, [the] federal home loan bank board, [the] government national mortgage association, the veterans administration and the department of housing and urban development shall be deemed reasonable, provided such information is reasonably available to the association.

(2) The association, within ten days after a request by a unit owner, shall furnish a certificate containing the information necessary to enable the unit owner to comply with this section. The unit owner shall also sign the certificate but the unit owner is not liable to the purchaser for any erroneous information provided by the association and included in the certificate unless and to the extent the unit owner had actual knowledge thereof.

(3) A purchaser is not liable for any unpaid assessment or fee against the unit as of the date of the certificate greater than the amount set forth in the certificate prepared by the association unless and to the extent such purchaser had actual knowledge thereof. A unit owner is not liable to a purchaser for the failure or delay of the

association to provide the certificate in a timely manner, but the purchaser's contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until conveyance, whichever occurs first. [1990 c 166 § 12; 1989 c 43 § 4-107.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.440 Conversion condominiums—Notice—Tenants. (1) A declarant of a conversion condominium, and any dealer who intends to offer units in such a condominium, shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion condominium notice of the conversion and provide those persons with the public offering statement no later than ninety days before the tenants and any subtenant in possession are required to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and shall be delivered pursuant to notice requirements set forth in RCW 59.12-.040. No tenant or subtenant may be required to vacate upon less than ninety days' notice, except by reason of nonpayment of rent, waste, conduct that disturbs other tenants' peaceful enjoyment of the premises, or act of unlawful detainer as defined in RCW 59.12.030, and the terms of the tenancy may not be altered during that period. Nothing in this subsection shall be deemed to waive or repeal RCW 59.18.200(2). Failure to give notice as required by this section is a defense to an action for possession.

(2) For sixty days after delivery or mailing of the notice described in subsection (1) of this section, the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If a tenant fails to purchase the unit during that sixty-day period, the offeror may not offer to dispose of an interest in that unit during the following one hundred eighty days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection does not apply to any unit in a conversion condominium if that unit will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

(3) If a seller, in violation of subsection (2) of this section, conveys a unit to a purchaser for value who has no knowledge of the violation, recording of the deed conveying the unit extinguishes any right a tenant may have to purchase that unit but does not affect the right of a tenant to recover damages from the seller for a violation of subsection (2) of this section.

(4) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated and otherwise complies with the provisions of this chapter and chapter 59.18 RCW, the notice also constitutes a notice to vacate specified by that statute.

(5) Nothing in this section permits termination of a lease by a declarant in violation of its terms.

(6) Notwithstanding RCW 64.34.050(1), a city or county may by appropriate ordinance require with respect to any conversion condominium within the jurisdiction of such city or county that:

(a) In addition to the statement required by RCW 64.34.415(1)(a), the public offering statement shall contain a copy of the written inspection report prepared by the appropriate department of such city or county, which report shall list any violations of the housing code or other governmental regulation, which code or regulation is applicable regardless of whether the real property is owned as a condominium or in some other form of ownership; said inspection shall be made within forty-five days of the declarant's written request therefor and said report shall be issued within fourteen days of said inspection being made;

(b) Prior to the conveyance of any residential unit within a conversion condominium, other than a conveyance to a declarant or affiliate of a declarant: (i) All violations disclosed in the inspection report provided for in (a) of this subsection, and not otherwise waived by such city or county, shall be repaired, and (ii) a certification shall be obtained from such city or county that such repairs have been made, which certification shall be based on a reinspection to be made within seven days of the declarant's written request therefor and which certification shall be issued within seven days of said reinspection being made;

(c) The repairs required to be made under (b) of this subsection shall be warranted by the declarant against defects due to workmanship or materials for a period of one year following the completion of such repairs;

(d) Prior to the conveyance of any residential unit within a conversion condominium, other than a conveyance to a declarant or affiliate of a declarant: (i) The declarant shall establish and maintain, during the one-year warranty period provided under (c) of this subsection, an account containing a sum equal to ten percent of the actual cost of making the repairs required under (b) of this subsection; (ii) during the one-year warranty period, the funds in such account shall be used exclusively for paying the actual cost of making repairs required, or for otherwise satisfying claims made, under such warranty; (iii) following the expiration of the one-year warranty period, any funds remaining in such account shall be immediately disbursed to the declarant; and (iv) the declarant shall notify in writing the association and such city or county as to the location of such account and any disbursements therefrom; and

(e) Relocation assistance not to exceed five hundred dollars per unit shall be paid to tenants and subtenants who elect not to purchase a unit and who are in lawful occupancy for residential purposes of a unit and whose monthly household income from all sources, on the date of the notice described in subsection (1) of this section, was less than an amount equal to eighty percent of (i) the monthly median income for comparably sized households in the standard metropolitan statistical area, as defined and established by the United States department of housing and urban development, in which the condominium is located, or (ii) if the condominium is not

within a standard metropolitan statistical area, the monthly median income for comparably sized households in the state of Washington, as defined and determined by said department. The household size of a unit shall be based on the number of persons actually in lawful occupancy of the unit. The tenant or subtenant actually in lawful occupancy of the unit shall be entitled to the relocation assistance. Relocation assistance shall be paid on or before the date the tenant or subtenant vacates and shall be in addition to any damage deposit or other compensation or refund to which the tenant is otherwise entitled. Unpaid rent or other amounts owed by the tenant or subtenant to the landlord may be offset against the relocation assistance.

(7) Violations of any city or county ordinance adopted as authorized by subsection (6) of this section shall give rise to such remedies, penalties, and causes of action which may be lawfully imposed by such city or county. Such violations shall not invalidate the creation of the condominium or the conveyance of any interest therein. [1990 c 166 § 13; 1989 c 43 § 4-110.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.452 Warranties of quality—Breach. (1) A judicial proceeding for breach of any obligations arising under RCW 64.34.443 and 64.34.445 must be commenced within four years after the cause of action accrues: PROVIDED, That the period for commencing an action for a breach accruing pursuant to subsection (2)(b) of this section shall not expire prior to one year after termination of the period of declarant control, if any, under RCW 64.34.308(4). Such period may not be reduced by either oral or written agreement.

(2) Subject to subsection (3) of this section, a cause of action or breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

(a) As to a unit, the date the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or the date of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and

(b) As to each common element, at the latest of (i) the date the first unit in the condominium was conveyed to a bona fide purchaser, (ii) the date the common element was completed, or (iii) the date the common element was added to the condominium.

(3) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the condominium, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier. [1990 c 166 § 14.]

Effective date—1990 c 166: See note following RCW 64.34.020.

Chapter 64.36 TIMESHARE REGULATION

Sections

64.36.320 Free gifts, awards, and prizes—Security arrangement required of promisor—Other requirements—Private causes of action.

64.36.320 Free gifts, awards, and prizes—Security arrangement required of promisor—Other requirements—Private causes of action. (1) No person, including a promoter, may advertise, sell, contract for, solicit, arrange, or promise a free gift, an award, a prize, or other item of value in this state as a condition for attending a sales presentation, touring a facility, or performing other activities in connection with the offer or sale of a timeshare under this chapter, without first providing the director with a bond, letter of credit, cash depository, or other security arrangement that will assure performance by the promisor and delivery of the promised gift, award, sweepstakes, prize, or other item of value.

(2) Promoters under this chapter shall be strictly liable for delivering promised gifts, prizes, awards, or other items of value offered or advertised in connection with the marketing of timeshares.

(3) Persons promised but not receiving gifts, prizes, awards, or other items of consideration covered under this section, shall be entitled in any cause of action in the courts of this state in which their causes prevail, to be awarded treble the stated value of the gifts, prizes, or awards, court costs, and reasonable attorney fees.

(4) The director may require that any fees or funds of any description collected from persons in advance, in connection with delivery by the promisor of gifts, prizes, awards, or other items of value covered under this section, be placed in a depository in this state, where they shall remain until performance by the promisor.

(5) The director may require commercial promotional programs to be registered and require the provision of whatever information, including financial information, the department deems necessary for protection of purchasers.

(6) Persons offering commercial promotional programs shall sign and present to the department a consent to service of process, in the manner required of promoters in this chapter.

(7) Registrants or their agents or other persons shall not take possession of promotional materials covered under this section and RCW 64.36.310, from recipients who have received the materials for attending a sales presentation or touring a project, unless the permission of the recipient is received and the recipient is provided with an accurate signed copy describing such promotional materials. The department shall adopt rules enforcing this subsection.

(8) Chapter 19.170 RCW applies to free gifts, awards, prizes, or other items of value regulated under this chapter. [1991 c 227 § 10; 1987 c 370 § 13.]

Severability—1991 c 227: See RCW 19.170.900.

Chapter 64.44

CONTAMINATED PROPERTIES

Sections

64.44.005	Legislative finding.
64.44.010	Definitions.
64.44.020	Reporting—Notice—Duties of local health officer.
64.44.030	Unfit for use—Notice—Hearing.
64.44.040	City or county options.
64.44.050	Decontamination by owner—Requirements.
64.44.060	Certification of contractors—Duties of department of health—Decontamination account.
64.44.070	Rules and standards—Authority to develop.
64.44.080	Civil liability—Immunity.
64.44.900	Application—Other remedies.
64.44.901	Severability—1990 c 213.

64.44.005 Legislative finding. The legislature finds that some properties are being contaminated by hazardous chemicals used in unsafe or illegal ways in the manufacture of illegal drugs. Innocent members of the public may be harmed by the residue left by these chemicals when the properties are subsequently rented or sold without having been decontaminated. [1990 c 213 § 1.]

64.44.010 Definitions. The words and phrases defined in this section shall have the following meanings when used in this chapter unless the context clearly indicates otherwise.

(1) "Authorized contractor" means a person who decontaminates, demolishes, or disposes of contaminated property as required by this chapter who is: (a) Certified by the department as provided for in RCW 64.44.060, or (b) until January 1, 1991, listed with the department as provided for in section 8, chapter 213, Laws of 1990.

(2) "Contaminated" or "contamination" means polluted by hazardous chemicals so that the property is unfit for human habitation or use due to immediate or long-term hazards. Property that at one time was contaminated but has been satisfactorily decontaminated according to procedures established by the state board of health is not "contaminated."

(3) "Hazardous chemicals" means the following substances used in the manufacture of illegal drugs: (a) Hazardous substances as defined in RCW 70.105D.020, and (b) precursor substances as defined in RCW 69.43-.010 which the state board of health, in consultation with the state board of pharmacy, has determined present an immediate or long-term health hazard to humans.

(4) "Officer" means a local health officer authorized under chapters 70.05, 70.08, and 70.46 RCW.

(5) "Property" means any property, site, structure, or part of a structure which is involved in the unauthorized manufacture or storage of hazardous chemicals. This includes but is not limited to single-family residences, units of multiplexes, condominiums, apartment buildings, boats, motor vehicles, trailers, manufactured housing, or any shop, booth, or garden. [1990 c 213 § 2.]

Effective date—1990 c 213 § 2, 12: "Sections 2 and 12 of this act are necessary for the immediate preservation of the public peace, health, or safety or support of the state government and its public institutions, and shall take effect on the effective date of the 1989-91

supplemental omnibus appropriations act (SSB 6407) [April 23, 1990] if specific funding for this act is provided therein." [1990 c 213 § 17.]

64.44.020 Reporting—Notice—Duties of local health officer. Whenever a law enforcement agency becomes aware that property has been contaminated by hazardous chemicals, that agency shall report the contamination to the local health officer. The local health officer shall cause a posting of a notice on the premises immediately upon being notified of the contamination and shall cause an inspection to be done on the property within fourteen days after receiving the notice of contamination. If a property owner believes that a tenant has contaminated property that was being leased or rented, and the property is vacated or abandoned, then the property owner shall contact the local health officer about the possible contamination. Local health officers or boards may charge reasonable fees for inspections of property requested by property owners.

If property is determined to be contaminated, then the local health officer shall cause a posting of a notice on the premises. A local health officer may enter, inspect, and survey at reasonable times any properties for which there are reasonable grounds to believe that the property has become contaminated.

Local health officers must report all cases of contaminated property to the state department of health. The department may make the list of contaminated properties available to health associations, landlord and realtor organizations, prosecutors, and other interested groups. The department shall promptly update the list of contaminated properties to remove those which have been decontaminated according to provisions of this chapter. [1990 c 213 § 3.]

64.44.030 Unfit for use—Notice—Hearing. If after the inspection of the property, the local health officer finds that it is contaminated, then the property shall be found unfit for use. The local health officer shall cause to be served either personally or by certified mail, with return receipt requested, upon all occupants and persons having any interest therein as shown upon the records of the auditor's office of the county in which such property is located, and shall post in a conspicuous place on the property, an order prohibiting use. If the whereabouts of such persons is unknown and the same cannot be ascertained by the local health officer in the exercise of reasonable diligence, and the health officer makes an affidavit to that effect, then the serving of the order upon such persons may be made either by personal service or by mailing a copy of the order by certified mail, postage prepaid, return receipt requested, to each person at the address appearing on the last equalized tax assessment roll of the county where the property is located or at the address known to the county assessor, and the order shall be posted conspicuously at the residence. A copy of the order shall also be mailed, addressed to each person or party having a recorded right, title, estate, lien, or interest in the property. Such order shall contain a notice that a hearing before the local health board or officer shall be held upon the request of a person required to be notified of the order under this

section. The request for a hearing must be made within ten days of serving the order. The hearing shall then be held within not less than twenty days nor more than thirty days after the serving of the order. The officer shall prohibit use as long as the property is found to be contaminated. A copy of the order shall also be filed with the auditor of the county in which the property is located, and such filing of the complaint or order shall have the same force and effect as other *lis pendens* notices provided by law. In any hearing concerning whether property is fit for use, the property owner has the burden of showing that the property is decontaminated or fit for use. The owner or any person having an interest in the property may file an appeal on any order issued by the local health board or officer within thirty days from the date of service of the order with the appeals commission established pursuant to RCW 35.80-.030. All proceedings before the appeals commission, including any subsequent appeals to superior court, shall be governed by the procedures established in chapter 35.80 RCW. [1990 c 213 § 4.]

64.44.040 City or county options. The city or county in which the contaminated property is located may take action to condemn or demolish property or to require the property be vacated or the contents removed from the property. The city or county must use an authorized contractor if property is demolished or removed under this section. No city or county may condemn or demolish property pursuant to this section until all procedures granting the right of notice and the opportunity to appeal in RCW 64.44.030 have been exhausted. [1990 c 213 § 5.]

64.44.050 Decontamination by owner—Requirements. An owner of contaminated property who desires to have the property decontaminated must use the services of an authorized contractor to decontaminate the property. The contractor shall prepare and submit a written work plan for decontamination to the local health officer. The local health officer may charge a reasonable fee for review of the work plan. If the work plan is approved and the decontamination is completed and the property is retested according to the plan and properly documented, then the health officer shall allow reuse of the property. A notice shall be recorded in the real property records if applicable, indicating the property has been decontaminated in accordance with rules of the state department of health. [1990 c 213 § 6.]

64.44.060 Certification of contractors—Duties of department of health—Decontamination account. (1) After January 1, 1991, a contractor may not perform decontamination, demolition, or disposal work unless issued a certificate by the state department of health. The department shall establish performance standards for contractors by rule in accordance with chapter 34.05 RCW, the administrative procedure act. The department shall train and test, or may approve courses to train and test, contractors and their employees on the essential elements in assessing property used as an illegal drug

manufacturing or storage site to determine hazard reduction measures needed, techniques for adequately reducing contaminants, use of personal protective equipment, methods for proper demolition, removal, and disposal of contaminated property, and relevant federal and state regulations. Upon successful completion of the training, the contractor or employee shall be certified.

(2) The department may require the successful completion of annual refresher courses provided or approved by the department for the continued certification of the contractor or employee.

(3) The department shall provide for reciprocal certification of any individual trained to engage in decontamination, demolition, or disposal work in another state when the prior training is shown to be substantially similar to the training required by the department. The department may require such individuals to take an examination or refresher course before certification.

(4) The department may deny, suspend, or revoke a certificate for failure to comply with the requirements of this chapter or any rule adopted pursuant to this chapter. A certificate may be denied, suspended, or revoked on any of the following grounds:

(a) Failing to perform decontamination, demolition, or disposal work under the supervision of trained personnel;

(b) Failing to file a work plan;

(c) Failing to perform work pursuant to the work plan;

(d) Failing to perform work that meets the requirements of the department; or

(e) The certificate was obtained by error, misrepresentation, or fraud.

(5) A contractor who violates any provision of this chapter may be assessed a fine not to exceed five hundred dollars for each violation.

(6) The department of health shall prescribe fees as provided for in RCW 43.70.250 for the issuance and renewal of certificates, the administration of examinations, and for the review of training courses.

(7) The decontamination account is hereby established in the state treasury. All fees collected under this chapter shall be deposited in this account. Moneys in the account may only be spent after appropriation for costs incurred by the department in the administration and enforcement of this chapter. [1990 c 213 § 7.]

64.44.070 Rules and standards—Authority to develop. The state board of health shall promulgate rules and standards for carrying out the provisions in this chapter in accordance with chapter 34.05 RCW, the administrative procedure act. The local board of health and the local health officer are authorized to exercise such powers as may be necessary to carry out this chapter. The department shall provide technical assistance to local health boards and health officers to carry out their duties under this chapter. The department shall develop guidelines for decontamination of a property used as a drug laboratory and methods for the testing of ground water, surface water, soil, and septic tanks for contamination. [1990 c 213 § 9.]

64.44.080 Civil liability—Immunity. Members of the state board of health and local boards of health, local health officers, and employees of the department of health and local health departments are immune from civil liability arising out of the performance of their duties under this chapter, unless such performance constitutes gross negligence or intentional misconduct. [1990 c 213 § 10.]

64.44.900 Application—Other remedies. This chapter shall not limit state or local government authority to act under any other statute, including chapter 35.80 or 7.48 RCW. [1990 c 213 § 11.]

64.44.901 Severability—1990 c 213. 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. [1990 c 213 § 14.]

Title 65 RECORDING, REGISTRATION, AND LEGAL PUBLICATION

Chapters

65.04 Duties of county auditor.

Chapter 65.04

DUTIES OF COUNTY AUDITOR

Sections

65.04.015	Definitions.
65.04.030	Instruments to be recorded or filed.
65.04.040	Method for recording instruments—Marginal notations—Arrangement of records.
65.04.050	Index of instruments, how made and kept—Recording of plat names.

65.04.015 Definitions. The definitions set forth [in] this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Recording officer" means the county auditor, or in charter counties the county official charged with the responsibility for recording instruments in the county records.

(2) "File," "filed," or "filing" means the act of delivering an instrument to the auditor or recording officer for recording into the official public records.

(3) "Record," "recorded," or "recording" means the process, such as electronic, mechanical, optical, magnetic, or microfilm storage used by the auditor or recording officer after filing to incorporate the instrument into the public records.

(4) "Record location number" means a unique number that identifies the storage location (book or volume and page, reel and frame, instrument number, auditor or recording officer file number, receiving number, electronic retrieval code, or other specific place) of each instrument in the public records accessible in the same

recording office where the instrument containing the reference to the location is found. [1991 c 26 § 3.]

65.04.030 Instruments to be recorded or filed. The auditor or recording officer must, upon the payment of the fees as required in RCW 36.18.010 for the same, acknowledge receipt therefor in writing or printed form and record in large and well bound books, or by photographic or photomechanical or other approved process, the following:

(1) Deeds, grants and transfers of real property, mortgages and releases of mortgages of real estate, instruments or agreements relating to community or separate property, powers of attorney to convey real estate, and leases which have been acknowledged or proved: **PROVIDED**, That deeds, contracts and mortgages of real estate described by lot and block and addition or plat, shall not be filed or recorded until the plat of such addition has been filed and made a matter of record;

(2) Patents to lands and receivers' receipts, whether for mineral, timber, homestead or preemption claims or cash entries;

(3) All such other papers or writing as are required by law to be recorded and such as are required by law to be filed. [1991 c 26 § 4; 1985 c 44 § 15; 1967 c 98 § 1; 1919 c 182 § 1; 1893 c 119 § 11; Code 1881 § 2727; 1865 p 26 § 1; RRS § 10601.]

Claim of spouse in community realty to be filed: RCW 26.16.100.

Marriage certificate to county auditor, filing and recording, etc.: RCW 26.04.090, 26.04.100.

Purchaser of community realty protected by record title: RCW 26.16.095.

65.04.040 Method for recording instruments—Marginal notations—Arrangement of records. Any state, county, or municipal officer charged with the duty of recording instruments in public records shall record them by record location number in the order filed, irrespective of the type of instrument, using a process that has been tested and approved for the intended purpose by the state archivist.

In addition, the county auditor or recording officer, in the exercise of the duty of recording instruments in public records, may, in lieu of transcription, record all instruments, that he or she is charged by law to record, by any photographic, photostatic, microfilm, microcard, miniature photographic or other process that actually reproduces or forms a durable medium for so reproducing the original, and which has been tested and approved for the intended purpose by the state archivist. If the county auditor or recording officer records any instrument by a process approved by the state archivist it shall not be necessary thereafter to make any notations or marginal notes, which are otherwise required by law, thereon if, in lieu of making said notations thereon, the auditor or recording officer immediately makes a note of such in the general index in the column headed "remarks," listing the record number location of the instrument to which the current entry relates back.

Previously recorded or filed instruments may be processed and preserved by any means authorized under

this section for the original recording of instruments. The county auditor or recording officer may provide for the use of the public, media containing reproductions of instruments and other materials that have been recorded pursuant to the provisions of this section. The contents of the media may be arranged according to date of filing, irrespective of type of instrument, or in such other manner as the county auditor or recording officer deems proper. [1991 c 26 § 5; 1985 c 44 § 16; 1967 c 98 § 2; 1959 c 254 § 1; 1919 c 125 § 1; RRS § 10602.]

State archivist: RCW 40.14.020.

65.04.050 Index of instruments, how made and kept—Recording of plat names. Every auditor or recording officer must keep a general index, direct and inverted. The index may be either printed on paper or produced on microfilm or microfiche, or it can be created from a computerized data base and displayed on a video display terminal. Any reference to a prior record location number may be entered in the remarks column. Any property legal description contained in the instrument must be entered in the description of property column of the general index. The direct index shall be divided into seven columns, and with heads to the respective columns, as follows: Date of reception, grantor, grantee, nature of instrument, volume and page where recorded, remarks, description of property. The auditor or recording officer shall correctly enter in such index every instrument concerning or affecting real estate which by law is required to be recorded, the names of grantors being in alphabetical order. The inverted index shall also be divided into seven columns, precisely similar, except that "grantee" shall occupy the second column and "grantor" the third, the names of grantees being in alphabetical order. The auditor or recording officer may combine the direct and indirect indexes into a single index if it contains all the information required to be contained in the separate direct and indirect indexes and the names of all grantors and grantees can be found by a person searching the combined index. For the purposes of this chapter, the term "grantor" means any person conveying or encumbering the title to any property, or any person against whom any lis pendens, judgment, notice of lien, order of sale, execution, writ of attachment, or claims of separate or community property shall be placed on record. The auditor or recording officer shall also enter in the general index, the name of the party or parties platting a town, village, or addition in the column prescribed for "grantors," describing the grantee in such case as "the public." However, the auditor or recording officer shall not receive or record any such plat or map until it has been approved by the mayor and common council of the municipality in which the property so platted is situated, or if the property be not situated within any municipal corporation, then the plat must be first approved by the county legislative authority. The auditor or recording officer shall not receive for record any plat, map, or subdivision of land bearing a name the same or similar to the name of any map or plat already on record in the office. The auditor or recording officer may establish a name reservation system

to preclude the possibility of duplication of names. [1991 c 26 § 6; 1893 c 119 § 12; Code 1881 § 2728; 1869 p 314 § 24; RRS § 10603.]

Title 66

ALCOHOLIC BEVERAGE CONTROL

Chapters

- 66.04** Definitions.
- 66.08** Liquor control board—General provisions.
- 66.12** Exemptions.
- 66.24** Licenses—Stamp taxes.
- 66.28** Miscellaneous regulatory provisions.

Chapter 66.04

DEFINITIONS

Sections

- 66.04.010 Definitions.

66.04.010 Definitions. In this title, unless the context otherwise requires:

(1) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance. The term "alcohol" does not include alcohol in the possession of a manufacturer or distiller of alcohol fuel, as described in RCW 66.12.130, which is intended to be denatured and used as a fuel for use in motor vehicles, farm implements, and machines or implements of husbandry.

(2) "Beer" means any malt beverage or malt liquor as these terms are defined in this chapter.

(3) "Brewer" means any person engaged in the business of manufacturing beer and malt liquor.

(4) "Board" means the liquor control board, constituted under this title.

(5) "Club" means an organization of persons, incorporated or unincorporated, operated solely for fraternal, benevolent, educational, athletic or social purposes, and not for pecuniary gain.

(6) "Consume" includes the putting of liquor to any use, whether by drinking or otherwise.

(7) "Dentist" means a practitioner of dentistry duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.32 RCW.

(8) "Distiller" means a person engaged in the business of distilling spirits.

(9) "Druggist" means any person who holds a valid certificate and is a registered pharmacist and is duly and regularly engaged in carrying on the business of pharmaceutical chemistry pursuant to chapter 18.64 RCW.

(10) "Drug store" means a place whose principal business is, the sale of drugs, medicines and pharmaceutical preparations and maintains a regular prescription

department and employs a registered pharmacist during all hours the drug store is open.

(11) "Employee" means any person employed by the board, including a vendor, as hereinafter in this section defined.

(12) "Fund" means 'liquor revolving fund.'

(13) "Hotel" means every building or other structure kept, used, maintained, advertised or held out to the public to be a place where food is served and sleeping accommodations are offered for pay to transient guests, in which twenty or more rooms are used for the sleeping accommodation of such transient guests and having one or more dining rooms where meals are served to such transient guests, such sleeping accommodations and dining rooms being conducted in the same building and buildings, in connection therewith, and such structure or structures being provided, in the judgment of the board, with adequate and sanitary kitchen and dining room equipment and capacity, for preparing, cooking and serving suitable food for its guests: PROVIDED FURTHER, That in cities and towns of less than five thousand population, the board shall have authority to waive the provisions requiring twenty or more rooms.

(14) "Imprisonment" means confinement in the county jail.

(15) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating. Liquor does not include confections or food products that contain one percent or less of alcohol by weight.

(16) "Manufacturer" means a person engaged in the preparation of liquor for sale, in any form whatsoever.

(17) "Malt beverage" or "malt liquor" means any beverage such as beer, ale, lager beer, stout, and porter obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. For the purposes of this title, any such beverage containing more than eight percent of alcohol by weight shall be referred to as "strong beer."

(18) "Package" means any container or receptacle used for holding liquor.

(19) "Permit" means a permit for the purchase of liquor under this title.

(20) "Person" means an individual, copartnership, association, or corporation.

(21) "Physician" means a medical practitioner duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.71 RCW.

(22) "Prescription" means a memorandum signed by a physician and given by him to a patient for the obtaining of liquor pursuant to this title for medicinal purposes.

(23) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, and/or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(24) "Regulations" means regulations made by the board under the powers conferred by this title.

(25) "Restaurant" means any establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains.

(26) "Sale" and "sell" include exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person; and also include a sale or selling within the state to a foreign consignee or his agent in the state. "Sale" and "sell" shall not include the giving, at no charge, of a reasonable amount of liquor by a person not licensed by the board to a person not licensed by the board, for personal use only. "Sale" and "sell" also does not include a raffle authorized under RCW 9.46.0315: PROVIDED, That the nonprofit organization conducting the raffle has obtained the appropriate permit from the board.

(27) "Soda fountain" means a place especially equipped with apparatus for the purpose of dispensing soft drinks, whether mixed or otherwise.

(28) "Spirits" means any beverage which contains alcohol obtained by distillation, including wines exceeding twenty-four percent of alcohol by volume.

(29) "Store" means a state liquor store established under this title.

(30) "Tavern" means any establishment with special space and accommodation for sale by the glass and for consumption on the premises, of beer, as herein defined.

(31) "Vendor" means a person employed by the board as a store manager under this title.

(32) "Winery" means a business conducted by any person for the manufacture of wine for sale, other than a domestic winery.

(33) "Domestic winery" means a place where wines are manufactured or produced within the state of Washington.

(34) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than twenty-four percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding twenty-four percent of alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this title, any beverage containing no more than fourteen percent of alcohol by volume when bottled or packaged by the manufacturer shall be referred to as "table wine," and any beverage containing alcohol in an amount more than fourteen percent by volume when bottled or packaged by the manufacturer shall be referred to as "fortified wine." However, "fortified wine" shall not include: (a) Wines that are both sealed or capped by cork closure and aged two years or more; and (b) wines that contain more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and that have not been produced with the addition of wine spirits, brandy, or alcohol.

This subsection shall not be interpreted to require that any wine be labeled with the designation "table wine" or "fortified wine."

(35) "Beer wholesaler" means a person who buys beer from a brewer or brewery located either within or beyond the boundaries of the state for the purpose of selling the same pursuant to this title, or who represents such brewer or brewery as agent.

(36) "Wine wholesaler" means a person who buys wine from a vintner or winery located either within or beyond the boundaries of the state for the purpose of selling the same not in violation of this title, or who represents such vintner or winery as agent. [1991 c 192 § 1; 1987 c 386 § 3; 1984 c 78 § 5; 1982 c 39 § 1; 1981 1st ex.s. c 5 § 1; 1980 c 140 § 3; 1969 ex.s. c 21 § 13; 1935 c 158 § 1; 1933 ex.s. c 62 § 3; RRS § 7306-3. Formerly RCW 66.04.010 through 66.04.380.]

Finding and declaration—Severability—1984 c 78: See notes following RCW 66.12.160.

Severability—1982 c 39: "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." [1982 c 39 § 3.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1969 ex.s. c 21: "The effective date of this 1969 amendatory act is July 1, 1969." [1969 ex.s. c 21 § 15.]

Chapter 66.08

LIQUOR CONTROL BOARD—GENERAL PROVISIONS

Sections

66.08.190 Liquor revolving fund—Disbursement of excess funds to state, counties, and cities—Withholding of funds for noncompliance.

66.08.190 Liquor revolving fund—Disbursement of excess funds to state, counties, and cities—Withholding of funds for noncompliance. When excess funds are distributed, all moneys subject to distribution shall be disbursed as follows:

(1) Three-tenths of one percent to the department of community development to be allocated to border areas under RCW 66.08.195; and

(2) From the amount remaining after distribution under subsection (1) of this section, fifty percent to the general fund of the state, ten percent to the counties of the state, and forty percent to the incorporated cities and towns of the state.

(3) The governor may notify and direct the state treasurer to withhold the revenues to which the counties and cities are entitled under this section if the counties or cities are found to be in noncompliance pursuant to RCW 36.70A.340. [1991 1st sp.s. c 32 § 34; 1988 c 229 § 4; 1957 c 175 § 6. Prior: 1955 c 109 § 2; 1949 c 187 § 1, part; 1939 c 173 § 1, part; 1937 c 62 § 2, part; 1935 c 80 § 1, part; 1933 ex.s. c 62 § 78, part; Rem. Supp. 1949 § 7306-78, part. Formerly RCW 43.66.090.]

Section headings not law—1991 1st sp.s. c 32: See RCW 36.70A.902.

Finding—1988 c 229: "The legislature finds and declares that certain counties and municipalities near international borders are subjected to a constant volume and flow of travelers and visitors for whom local government services must be provided. The legislature further finds that it is in the public interest and for the protection of the health, property, and welfare of the residents and visitors to provide supplemental resources to augment and maintain existing levels of police protection in such areas and to alleviate the impact of such added burdens." [1988 c 229 § 2.]

Effective date—1988 c 229 §§ 2-4: "Sections 2 through 4 of this act shall take effect July 1, 1989." [1988 c 229 § 5.]

Chapter 66.12 EXEMPTIONS

Sections

66.12.190 Wine shipments from out of state—Limitations.
66.12.200 Out-of-state wine shipments—Labeling.
66.12.210 Wine shipments from out of state—Unlicensed shipper—Penalties.
66.12.220 Out-of-state wine shipper's license—Revocation.

66.12.190 Wine shipments from out of state—Limitations. Notwithstanding any other provision of Title 66 RCW, the holder of a license to manufacture wine in a state which affords holders of a Washington license issued under RCW 66.24.170 an equal reciprocal shipping privilege, may ship for personal use and not for resale not more than two cases of wine of its own manufacture per year, with each case containing not more than nine liters, to any state resident twenty-one years of age or older. Out-of-state wine manufacturers that are authorized to ship wine pursuant to RCW 66.12.190 through 66.12.220 shall first obtain a license from the Washington state liquor control board under procedures prescribed by rule of the board, before shipping wine into Washington. Delivery of a shipment under this section shall not be deemed to constitute a sale in this state. [1991 c 149 § 1.]

66.12.200 Out-of-state wine shipments—Labeling. The shipping container of any wine sent into or out of this state under RCW 66.12.190 shall be clearly labeled to indicate that the package cannot be delivered to a person under twenty-one years of age or to an intoxicated person. [1991 c 149 § 2.]

66.12.210 Wine shipments from out of state—Unlicensed shipper—Penalties. Pickup, delivery, or acceptance of any container of wine, by a person, that is shipped into this state to a person from a person who is not licensed as provided in RCW 66.12.190, shall constitute a civil violation and be subject to the penalties imposed by chapter 66.44 RCW. [1991 c 149 § 3.]

66.12.220 Out-of-state wine shipper's license—Revocation. A license issued under RCW 66.12.190 to a wine manufacturer, shipper, or person located outside this state who, within this state, advertises for or solicits consumers to engage in interstate reciprocal wine shipment under RCW 66.12.190 through 66.12.220 shall be revoked. [1991 c 149 § 4.]

Chapter 66.24

LICENSES—STAMP TAXES

Sections	
66.24.170	Domestic winery license—Fee—Report—Wine wholesaler's, importer's, and retailer's licenses included—Domestic wine made into sparkling wine.
66.24.210	Imposition of tax on all wines sold to wine wholesalers and liquor control board—Additional taxes imposed.
66.24.320	Beer retailer's license—Class A—Containers—Fee.
66.24.330	Beer retailer's license—Class B—Containers—Fee.
66.24.350	Beer retailer's license—Class D—Fee.
66.24.360	Beer retailer's license—Class E—Fee—Samples.

66.24.170 Domestic winery license—Fee—Report—Wine wholesaler's, importer's, and retailer's licenses included—Domestic wine made into sparkling wine. (1) There shall be a license to domestic wineries; fee to be computed only on the liters manufactured: One hundred thousand liters or less per year, one hundred dollars per year; over one hundred thousand liters to seven hundred fifty thousand liters per year, four hundred dollars per year; and over seven hundred fifty thousand liters per year, eight hundred dollars per year.

(2) Any applicant for a domestic winery license shall, at the time of filing application for license, accompany such application with a license fee based upon a reasonable estimate of the amount of wine liters to be manufactured by such applicant. Persons holding domestic winery licenses shall report annually at the end of each fiscal year, at such time and in such manner as the board may prescribe, the amount of wine manufactured by them during the fiscal year. If the total amount of wine manufactured during the year exceeds the amount permitted annually by the license fee already paid the board, the licensee shall pay such additional license fee

as may be unpaid in accordance with the schedule provided in this section.

(3) Any domestic winery licensed under this section shall also be considered as holding, for the purposes of selling or importing wine of its own production, a current wine wholesaler's license under RCW 66.24.200, a wine importer's license under RCW 66.24.204, and a wine retailer's license, class F, under RCW 66.24.370 without further application or fee. Any winery operating as a wholesaler, importer, or retailer under this subsection shall comply with the applicable laws and rules relating to wholesalers, importers, and retailers.

(4) Wine produced in Washington state by a domestic winery licensee may be shipped out-of-state for the purpose of making it into sparkling wine and then returned to such licensee for resale. Such wine shall be deemed wine manufactured in the state of Washington for the purposes of RCW 66.24.206, and shall not require a special license. [1991 c 192 § 2; 1982 c 85 § 4; 1981 1st ex.s. c 5 § 31; 1939 c 172 § 1 (23C); 1937 c 217 § 1 (23C) (adding new section 23-C to 1933 ex.s. c 62); RRS § 7306-23C. Formerly RCW 66.24.170, 66.24.180 and 66.24.190.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.210 Imposition of tax on all wines sold to wine wholesalers and liquor control board—Additional taxes imposed. (1) There is hereby imposed upon all wines sold to wine wholesalers and the Washington state liquor control board, within the state a tax at the rate of twenty and one-fourth cents per liter: PROVIDED, HOWEVER, That wine sold or shipped in bulk from one winery to another winery shall not be subject to such tax. The tax provided for in this section may, if so prescribed by the board, be collected by means of stamps to be furnished by the board, or by direct payments based on wine purchased by wine wholesalers. Every person purchasing wine under the provisions of this section shall on or before the twentieth day of each month report to the board all purchases during the preceding calendar month in such manner and upon such forms as may be prescribed by the board, and with such report shall pay the tax due from the purchases covered by such report unless the same has previously been paid. Any such purchaser of wine whose applicable tax payment is not postmarked by the twentieth day following the month of purchase will be assessed a penalty at the rate of two percent a month or fraction thereof. If this tax be collected by means of stamps, every such person shall procure from the board revenue stamps representing the tax in such form as the board shall prescribe and shall affix the same to the package or container in such manner and in such denomination as required by the board and shall cancel the same prior to the delivery of the package or container containing the wine to the purchaser. If the tax is not collected by means of stamps, the board may require that every such person shall execute to and file with the board a bond to be approved by the board, in such amount as the board may fix, securing the payment of the tax. If any such person fails to pay the tax when

due, the board may forthwith suspend or cancel the license until all taxes are paid.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. All revenues collected during any month from this additional tax shall be transferred to the state general fund by the twenty-fifth day of the following month.

(3) An additional tax is imposed on wines subject to tax under subsection (1) of this section, at the rate of one-fourth of one cent per liter for wine sold after June 30, 1987. Such additional tax shall cease to be imposed on July 1, 1993. All revenues collected under this subsection (3) shall be disbursed quarterly to the Washington wine commission for use in carrying out the purposes of chapter 15.88 RCW.

(4) Until July 1, 1995, an additional tax is imposed on all wine subject to tax under subsection (1) of this section. The additional tax is equal to twenty-three and forty-four one-hundredths cents per liter on fortified wine as defined in RCW 66.04.010(34) when bottled or packaged by the manufacturer and one cent per liter on all other wine. All revenues collected during any month from this additional tax shall be deposited in the drug enforcement and education account under RCW 69.50-.520 by the twenty-fifth day of the following month. [1991 c 192 § 3; 1989 c 271 § 501; 1987 c 452 § 11; 1983 2nd ex.s. c 3 § 10; 1982 1st ex.s. c 35 § 23; 1981 1st ex.s. c 5 § 12; 1973 1st ex.s. c 204 § 2; 1969 ex.s. c 21 § 3; 1943 c 216 § 2; 1939 c 172 § 3; 1935 c 158 § 3 (adding new section 24-A to 1933 ex.s. c 62); Rem. Supp. 1943 § 7306-24A. Formerly RCW 66.04.120, 66.24.210, part, 66.24.220 and 66.24.230, part. FORMER PART OF SECTION: 1933 ex.s. c 62 § 25, part, now codified as RCW 66.24.230.]

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.310.

Construction—**Effective dates**—**Severability**—1987 c 452: See RCW 15.88.900 through 15.88.902.

Construction—**Severability**—**Effective dates**—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—**Effective dates**—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Severability—**Effective date**—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Floor stocks tax: "There is hereby imposed upon every licensed wine wholesaler who possesses wine for resale upon which the tax has not been paid under section 2 of this 1973 amendatory act, a floor stocks tax of sixty-five cents per wine gallon on wine in his possession or under his control on June 30, 1973. Each such wholesaler shall within twenty days after June 30, 1973, file a report with the Washington State liquor control board in such form as the board may prescribe, showing the wine products on hand July 1, 1973, converted to gallons thereof and the amount of tax due thereon. The tax imposed by this section shall be due and payable within twenty days after July 1, 1973, and thereafter bear interest at the rate of one percent per month." [1973 1st ex.s. c 204 § 3.]

Effective date—1973 1st ex.s. c 204: See note following RCW 82.08.150.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

Giving away of liquor prohibited—Exceptions: RCW 66.28.040.

No tax imposed on wine shipped to bonded wine warehouse: RCW 66.24.185.

66.24.320 Beer retailer's license—Class A—Containers—Fee. There shall be a beer retailer's license to be designated as a class A license to sell beer at retail, for consumption on the premises and to sell beer for consumption off the premises: **PROVIDED, HOWEVER,** That beer sold for consumption off the premises must be in original sealed packages of the manufacturer or bottler of not less than seven and three-fourths gallons: **AND PROVIDED FURTHER,** That beer may be sold to a purchaser in a sanitary container brought to the premises by the purchaser and filled at the tap by the retailer at the time of sale; such license to be issued only to hotels, restaurants, drug stores or soda fountains, dining places on boats and airplanes, to clubs, and at sports arenas or race tracks during recognized professional athletic events. The annual fee for said license, if issued in cities and towns, shall be graduated according to the population thereof as follows:

Cities and towns	Fee
Less than 20,000	\$ 205
20,000 or over	\$ 355

The annual fee for such license, if issued outside of cities and towns, shall be two hundred five dollars: **PROVIDED, HOWEVER,** That the annual license fee for such license, if issued to dining places on vessels not exceeding one thousand gross tons, plying on inland waters of the state of Washington on regular schedules, shall be two hundred five dollars. [1991 c 42 § 1; 1987 c 458 § 11; 1981 1st ex.s. c 5 § 37; 1977 ex.s. c 9 § 1; 1969 c 117 § 1; 1967 ex.s. c 75 § 2; 1941 c 220 § 1; 1937 c 217 § 1 (23M) (adding new section 23-M to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23M.]

Severability—1987 c 458: See note following RCW 48.21.160.

Severability—**Effective date**—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

66.24.330 Beer retailer's license—Class B—Containers—Fee. There shall be a beer retailer's license to be designated as a class B license to sell beer at retail, for consumption on the premises and to sell beer for consumption off the premises: **PROVIDED, HOWEVER,** That beer sold for consumption off the premises must be in original sealed packages of the manufacturer or bottler of not less than seven and three-fourths gallons: **AND PROVIDED FURTHER,** That beer may be sold to a purchaser in a sanitary container brought to the premises by the purchaser and filled at the tap by the retailer at the time of sale; such license to be issued only to a person operating a tavern. The annual fee for said license, if issued in cities and towns, shall be graduated according to the population thereof as follows:

Cities and towns	Fee
Less than 20,000	\$ 205
20,000 or over	\$ 355

The annual fee for such license, if issued outside of cities and towns, shall be two hundred five dollars. [1991 c 42 § 2; 1987 c 458 § 12; 1981 1st ex.s. c 5 § 38; 1977

ex.s. c 9 § 2; 1973 1st ex.s. c 209 § 15; 1967 ex.s. c 75 § 3; 1941 c 220 § 2; 1937 c 217 § 1 (23N) (adding new section 23-N to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23N.]

Severability—1987 c 458: See note following RCW 48.21.160.

Severability—**Effective date**—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—**Effective date**—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

66.24.350 Beer retailer's license—Class D—

Fee. There shall be a beer retailer's license to be designated as [a] class D license to sell beer by the opened bottle at retail, for consumption upon the premises only, such license to be issued to hotels, restaurants, dining places on boats and aeroplanes, clubs, drug stores, or soda fountains, and such other places where the sale of beer is not the principal business conducted; fee one hundred twenty-five dollars per annum. [1991 c 42 § 3; 1981 1st ex.s. c 5 § 40; 1967 ex.s. c 75 § 5; 1937 c 217 § 1 (23P) (adding new section 23-P to 1933 ex.s. c 62); RRS § 7306-23P.]

Severability—**Effective date**—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

66.24.360 Beer retailer's license—Class E—

Fee—Samples. There shall be a beer retailer's license to be designated as [a] class E license to sell beer at retail in bottles and original packages, not to be consumed upon the premises where sold, at any store other than the state liquor stores. Licensees holding only an E license may not sell malt liquor in kegs or other containers capable of holding four gallons or more of liquid. The annual fee for the license is seventy-five dollars for each store: PROVIDED, That a holder of a class A or a class B license shall be entitled to the privileges permitted in this section by paying an annual fee of twenty-five dollars for each store. Licensees under this section whose business is primarily the sale of beer and/or wine at retail may provide, free or for a charge, single-serving samples of two ounces or less to customers for the purpose of sales promotion. Sampling activities of licensees under this section shall be subject to RCW 66.28.010 and 66.28.040 and the cost of sampling under this section may not be borne, directly or indirectly, by any manufacturer, importer, or wholesaler of liquor.

For the purpose of this section, "beer" includes, in addition to the usual and customary meaning, bottle conditioned beer which has been fermented partially or completely in the container in which it is sold to the retail customer and which may contain residual active yeast. The bottles and original packages in which such bottle conditioned beer may be sold under this section shall not exceed one hundred seventy ounces in capacity. [1991 c 42 § 4; 1987 c 46 § 1; 1981 1st ex.s. c 5 § 41;

1967 ex.s. c 75 § 6; 1937 c 217 § 1 (23Q) (adding new section 23-Q to 1933 ex.s. c 62); RRS § 7306-23Q.]

Severability—**Effective date**—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

Employees under eighteen allowed to handle beer or wine: RCW 66.44.340.

Chapter 66.28

MISCELLANEOUS REGULATORY PROVISIONS

Sections

- 66.28.042 Providing food and beverages for business meetings permitted. (Effective until June 30, 1995.)
- 66.28.043 Providing food, beverages, transportation, and admission to events permitted. (Effective until June 30, 1995.)

66.28.042 Providing food and beverages for business meetings permitted. (Effective until June 30, 1995.) A liquor manufacturer, importer, or wholesaler may provide to licensed retailers and their employees food and beverages for consumption at a meeting at which the primary purpose is the discussion of business, and may provide local ground transportation to and from such meetings. The value of the food, beverage, or transportation provided under this section shall not be considered the advancement of moneys or moneys' worth within the meaning of RCW 66.28.010, nor shall it be considered the giving away of liquor within the meaning of RCW 66.28.040. The board may adopt rules for the implementation of this section. [1990 c 125 § 1.]

Expiration date—1990 c 125: "This act shall expire June 30, 1995." [1990 c 125 § 3.]

66.28.043 Providing food, beverages, transportation, and admission to events permitted. (Effective until June 30, 1995.) A liquor manufacturer, importer, or wholesaler may provide to licensed retailers and their employees tickets or admission fees for athletic events or other forms of entertainment occurring within the state of Washington, if the manufacturer, importer, wholesaler, or any of their employees accompanies the licensed retailer or its employees to the event. A liquor manufacturer, importer, or wholesaler may also provide to licensed retailers and their employees food and beverages for consumption at such events, and local ground transportation to and from activities allowed under this section. The value of the food, beverage, transportation, or admission to events provided under this section shall not be considered the advancement of moneys or moneys' worth within the meaning of RCW 66.28.010, nor shall it be considered the giving away of liquor within the meaning of RCW 66.28.040. The board may adopt rules for the implementation of this section. [1990 c 125 § 2.]

Expiration date—1990 c 125: See note following RCW 66.28.042.

Title 67
SPORTS AND RECREATION—
CONVENTION FACILITIES

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- 67.16** Horse racing.
67.28 Public stadium, convention, performing arts,
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Chapter 67.16
HORSE RACING

Sections

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fund".
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Reimbursement for new racetracks.
67.16.105 Gross receipts—Commission's percentage.
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67.16.170 Gross receipts—Retention of percentage by licensees.
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67.16.200 Satellite locations—Parimutuel wagering.
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67.16.230 Satellite locations—Fees.
67.16.240 Repealed.
67.16.250 Washington thoroughbred racing fund.
67.16.910 Repealed.
67.16.911 Repealed.

67.16.010 Definitions. Unless the context otherwise requires, words and phrases as used herein shall mean:

"Commission" shall mean the Washington horse racing commission, hereinafter created.

"Parimutuel machine" shall mean and include both machines at the track and machines at the satellite locations, that record parimutuel bets and compute the payoff.

"Person" shall mean and include individuals, firms, corporations and associations.

"Race meet" shall mean and include any exhibition of thoroughbred, quarter horse, paint horse, appaloosa horse racing, arabian horse racing, or standard bred harness horse racing, where the parimutuel system is used.

Singular shall include the plural, and the plural shall include the singular; and words importing one gender shall be regarded as including all other genders. [1991 c 270 § 1; 1985 c 146 § 1; 1982 c 132 § 1; 1969 c 22 § 1; 1949 c 236 § 1; 1933 c 55 § 1; Rem. Supp. 1949 § 8312-1.]

Severability—1985 c 146: "If any provisions or application of any provisions of this chapter are invalidated by a court of law, the remainder of the chapter shall not be affected." [1985 c 146 § 15.]

Severability—1982 c 132: "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." [1982 c 132 § 6.]

67.16.014 Washington horse racing commission—Ex officio nonvoting members. In addition to the commission members appointed under RCW 67.16.012, there shall be four ex officio nonvoting members consisting of: (1) Two members of the senate, one from the majority political party and one from the minority political party, both to be appointed by the president of the senate; and (2) two members of the house of representatives, one from the majority political party and one from the minority political party, both to be appointed by the speaker of the house of representatives. The appointments shall be for the term of two years or for the period in which the appointee serves as a legislator, whichever expires first. Members may be reappointed, and vacancies shall be filled in the same manner as original appointments are made. The ex officio members shall assist in the policy making, rather than administrative, functions of the commission, and shall collect data deemed essential to future legislative proposals and exchange information with the commission. The ex officio members shall be deemed engaged in legislative business while in attendance upon the business of the commission and shall be limited to such allowances therefor as otherwise provided in RCW 44.04.120, the same to be paid from the horse racing commission fund as being expenses relative to commission business. [1991 c 270 § 2; 1987 c 453 § 3.]

67.16.060 Prohibited practices—Parimutuel system permitted—Race meet as public nuisance. (1) It shall be unlawful:

(a) To conduct pool selling, bookmaking, or to circulate hand books; or

(b) To bet or wager on any horse race other than by the parimutuel method; or

(c) For any licensee to take more than the percentage provided in RCW 67.16.170 and 67.16.175; or

(d) For any licensee to compute breaks in the parimutuel system otherwise than at ten cents.

(2) Any willful violation of the terms of this chapter, or of any rule, regulation, or order of the commission shall constitute a gross misdemeanor and when such violation is by a person holding a license under this chapter, the commission may cancel the license held by the offender, and such cancellation shall operate as a forfeiture of all rights and privileges granted by the commission and of all sums of money paid to the commission by the offender; and the action of the commission in that respect shall be final.

(3) The commission shall have power to exclude from any and all race courses of the state of Washington any person whom the commission deems detrimental to the best interests of racing or any person who willfully violates any of the provisions of this chapter or of any rule, regulation, or order issued by the commission.

(4) Every race meet held in this state contrary to the provisions of this chapter is hereby declared to be a

public nuisance. [1991 c 270 § 3; 1985 c 146 § 4; 1979 c 31 § 1; 1933 c 55 § 7; RRS § 8312-7.]

Severability—1985 c 146: See note following RCW 67.16.010.
Gambling: Chapters 9.46 and 9.47 RCW.

67.16.100 Disposition of fees—“State trade fair fund”—“Fair fund”. (1) All sums paid to the commission under this chapter, including those sums collected for license fees and excluding those sums collected under RCW 67.16.102, 67.16.105(3), and 67.16.105(4), shall be disposed of by the commission as follows:

(a) Fifty percent thereof shall be retained by the commission for the payment of the salaries of its members, secretary, clerical, office, and other help and all expenses incurred in carrying out the provisions of this chapter. No salary, wages, expenses, or compensation of any kind shall be paid by the state in connection with the work of the commission.

(b) One percent shall, on the next business day following the receipt thereof, be paid to the state treasurer to be deposited in the general fund.

(c) Three percent shall, on the next business day following the receipt thereof, be paid to the state treasurer, who is hereby made ex officio treasurer of a fund to be known as the "state trade fair fund" which shall be maintained as a separate and independent fund, and made available to the director of trade and economic development for the sole purpose of assisting state trade fairs.

(d) Forty-six percent shall be paid to the state treasurer, who is hereby made ex officio treasurer of a fund to be known as the "fair fund," which shall be maintained as a separate and independent fund outside of the state treasury, and made available to the director of agriculture for the sole purpose of assisting fairs in the manner provided in Title 15 RCW.

(2) Any moneys collected or paid to the commission under the terms of this chapter and not expended at the close of the fiscal biennium shall be paid to the state treasurer and be placed in the general fund. The commission may, with the approval of the office of financial management, retain any sum required for working capital. [1991 c 270 § 4. Prior: 1985 c 466 § 67; 1985 c 146 § 6; 1980 c 16 § 1; prior: 1979 c 151 § 169; 1979 c 31 § 2; 1977 c 75 § 81; 1965 c 148 § 7; 1955 c 106 § 5; 1947 c 34 § 2; 1941 c 48 § 4; 1935 c 182 § 30; 1933 c 55 § 9; Rem. Supp. 1947 § 8312-9.]

Effective date—Severability—1985 c 466: See notes following RCW 43.31.005.

Severability—1985 c 146: See note following RCW 67.16.010.
State international trade fairs: RCW 43.31.790 through 43.31.850.
Transfer of surplus funds in state trade fair fund to general fund: RCW 43.31.832 through 43.31.834.

67.16.102 Withholding of additional one percent of gross receipts—Payment to owners—Interest payment on one percent and amount retained by commission—Reimbursement for new racetracks. (1) Notwithstanding any other provision of chapter 67.16 RCW to the contrary the licensee shall withhold and shall pay daily to the commission, in addition to the

percentages authorized by RCW 67.16.105, one percent of the gross receipts of all parimutuel machines at each race meet which sums shall, at the end of each meet, be paid by the commission to the licensed owners of those horses finishing first, second, third and fourth Washington bred only at each meet from which the additional one percent is derived in accordance with an equitable distribution formula to be promulgated by the commission prior to the commencement of each race meet: **PROVIDED,** That nothing in this section shall apply to race meets which are nonprofit in nature, are of ten days or less, and have an average daily handle of less than one hundred twenty thousand dollars: **PROVIDED,** That the additional one percent of the gross receipts of all parimutuel machines at each race meet and the amount retained by the commission as specified in RCW 67.16.100(1)(a) shall be deposited daily in a time deposit by the commission and the interest derived therefrom shall be distributed annually on an equal basis to those race courses at which independent race meets are held which are nonprofit in nature and are of ten days or less: **PROVIDED,** That prior to receiving a payment under this section any new race course shall meet the qualifications set forth in this section for a period of two years: **PROVIDED, FURTHER,** That said distributed funds shall be used for the purpose of maintaining and upgrading the respective racing courses and equine quartering areas of said nonprofit meets. The commission shall not permit the licensees to take into consideration the benefits derived from this section in establishing purses.

(2) The commission is authorized to pay at the end of the calendar year one-half of the one percent collected from a new licensee under subsection (1) of this section for reimbursement of capital construction of that new licensee's new race track for a period of five years. This reimbursement does not include interest earned on that one-half of one percent and such interest shall continue to be collected and disbursed as provided in RCW 67.16.101 and subsection (1) of this section. [1991 c 270 § 5; 1982 c 132 § 5; 1979 c 31 § 3; 1977 ex.s. c 372 § 2; 1969 ex.s. c 233 § 3.]

Severability—1982 c 132: See note following RCW 67.16.010.

Severability—1977 ex.s. c 372: See note following RCW 67.16.101.

67.16.105 Gross receipts—Commission's percentage. (1) Licensees of race meets that are nonprofit in nature, are of ten days or less, and have an average daily handle of one hundred twenty thousand dollars or less shall withhold and pay to the commission daily for each authorized day of racing one-half percent of the daily gross receipts from all parimutuel machines at each race meet.

(2) Licensees of race meets that do not fall under subsection (1) of this section shall withhold and pay to the commission daily for each authorized day of racing the following applicable percentage of all daily gross receipts from all parimutuel machines at each race meet:

(a) If the daily gross receipts of all parimutuel machines are more than two hundred fifty thousand dollars,

the licensee shall withhold and pay to the commission daily two and one-half percent of the daily gross receipts; and

(b) If the daily gross receipts of all parimutuel machines are two hundred fifty thousand dollars or less, the licensee shall withhold and pay to the commission daily one percent of the daily gross receipts.

(3) In addition to those amounts in subsections (1) and (2) of this section, all licensees shall forward one-tenth of one percent of the daily gross receipts of all parimutuel machines to the commission daily for payment to those nonprofit race meets as set forth in RCW 67.16.130 and subsection (1) of this section, but said percentage shall not be charged against the licensees. The total of such payments shall not exceed one hundred fifty thousand dollars in any one year and any amount in excess of one hundred fifty thousand dollars shall be remitted to the general fund. Payments to nonprofit race meets under this subsection shall be distributed on a pro rata per-race-day basis and used only for purses at race tracks that have been operating under RCW 67.16.130 and subsection (1) of this section for the five consecutive years immediately preceding the year of payment.

(4) In addition to those sums paid to the commission in subsection (2) of this section, licensees who are nonprofit corporations and have race meets of thirty days or more shall withhold and pay to the commission daily for each authorized day of racing an amount equal to two and one-half percent of the daily gross receipts of all parimutuel machines at each race meet. Said percentage shall come from that amount the licensee is authorized to retain under RCW 67.16.170(2). The commission shall deposit these moneys in the Washington thoroughbred racing fund created in RCW 67.16.250. [1991 c 270 § 6; 1987 c 347 § 4; 1985 c 146 § 7; 1982 c 32 § 3; 1979 c 31 § 6.]

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1982 c 32: See note following RCW 67.16.020.

67.16.130 Nonprofit race meets—Licensing—

Fees. (1) Notwithstanding any other provision of law or of chapter 67.16 RCW, the commission may license race meets which are nonprofit in nature, of ten days or less, and which have an average daily handle of one hundred twenty thousand dollars or less, at a daily licensing fee of ten dollars, and the sponsoring nonprofit association shall be exempt from any other fees as provided for in chapter 67.16 RCW or by rule or regulation of the commission: PROVIDED, That the commission may deny the application for a license to conduct a racing meet by a nonprofit association, if same shall be determined not to be a nonprofit association by the Washington state racing commission.

(2) Notwithstanding any other provision of law or of chapter 67.16 RCW or any rule promulgated by the commission, no license for a race meet which is nonprofit in nature, of ten days or less, and which has an average daily handle of one hundred twenty thousand dollars or less, shall be denied for the reason that the applicant has not installed an electric parimutuel tote board.

(3) As a condition to the reduction in fees as provided for in subsection (1) of this section, all fees charged to horse owners, trainers, or jockeys, or any other fee charged for a permit incident to the running of such race meet shall be retained by the commission as reimbursement for its expenses incurred in connection with the particular race meet. [1991 c 270 § 7; 1985 c 146 § 8; 1982 c 32 § 4; 1979 c 31 § 4; 1969 ex.s. c 94 § 2.]

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1982 c 32: See note following RCW 67.16.020.

Effective date—1969 ex.s. c 94: "This 1969 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 May 1, 1969." [1969 ex.s. c 94 § 3.]

67.16.170 Gross receipts—Retention of percentage by licensees. (1) Licensees of race meets that are nonprofit in nature, are of ten days or less, and have an average daily handle of one hundred twenty thousand dollars or less may retain daily for each authorized day of racing fourteen and one-half percent of daily gross receipts of all parimutuel machines at each race meet.

(2) Licensees of race meets that do not fall under subsection (1) of this section may retain daily for each authorized day of racing the following percentages from the daily gross receipts of all parimutuel machines at each race meet:

(a) If the daily gross receipts of all parimutuel machines are more than two hundred fifty thousand dollars, the licensee may retain daily twelve and one-half percent of the daily gross receipts; and

(b) If the daily gross receipts of all parimutuel machines are two hundred fifty thousand dollars or less, the licensee may retain daily fourteen percent of the daily gross receipts. [1991 c 270 § 8; 1987 c 347 § 2; 1985 c 146 § 9; 1983 c 228 § 1; 1979 c 31 § 5.]

Severability—1985 c 146: See note following RCW 67.16.010.

67.16.175 Exotic wagers—Retention of percentage by race meets. (1) In addition to the amounts authorized to be retained in RCW 67.16.170, race meets may retain daily for each authorized day of racing an additional six percent of the daily gross receipts of all parimutuel machines from exotic wagers at each race meet.

(2) Of the amounts retained in subsection (1) of this section, one-sixth shall be used for Washington-bred breeder awards.

(3) Of the amounts retained for breeder awards under subsection (2) of this section, twenty-five percent shall be retained by a new licensee for reimbursement of capital construction of the new licensee's new race track for a period of five years.

(4) As used in this section, "exotic wagers" means any multiple wager. Exotic wagers are subject to approval of the commission. [1991 c 270 § 9. Prior: 1987 c 453 § 1; 1987 c 347 § 3; 1986 c 43 § 1; 1985 c 146 § 10; 1981 c 135 § 1.]

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1981 c 135: "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." [1981 c 135 § 2.]

67.16.200 Satellite locations—Parimutuel wagering. (1) A racing association licensed by the commission to conduct a race meet may seek approval from the commission to conduct parimutuel wagering on its program at a satellite location or locations within the state of Washington. The sale of parimutuel pools at satellite locations shall be conducted only during the licensee's race meet and simultaneous to all parimutuel wagering activity conducted at the licensee's racing facility in the state of Washington. The commission's authority to approve satellite wagering at a particular location is subject to the following limitations:

(a) The commission may approve only one satellite location in each county in the state; however, the commission may grant approval for more than one licensee to conduct wagering at each satellite location.

(b) The commission shall not allow a licensee to conduct satellite wagering at a satellite location within twenty ground miles of the licensee's racing facility. For purposes of this section, "ground miles" means miles measured from point to point in a straight line.

(c)(i) The commission may allow a licensee to conduct satellite wagering at a satellite location within fifty ground miles of the racing facility of another licensee who conducts race meets of thirty days or more, but only if the satellite location is the racing facility of another licensee who conducts race meets of thirty days or more and only if the licensee seeking to conduct satellite wagering suspends its program during the conduct of the meets of all licensees within fifty ground miles; except that the commission may allow a licensee that conducts satellite wagering at another track, pursuant to this subsection, to use other satellite locations, used by that track with the approval of the owner of that track, even though those satellite locations are within a fifty ground mile radius.

(ii) Subject to subsection (1)(c)(i) of this section, the commission may allow a licensee to conduct satellite wagering at a satellite location within fifty ground miles of the racing facility of another licensee who conducts race meets of under thirty days, but only if the licensee seeking to conduct satellite wagering suspends its satellite program during the conduct of the meets of all licensees within fifty ground miles.

(2) Subject to local zoning and other land use ordinances, the commission shall be the sole judge of whether approval to conduct wagering at a satellite location shall be granted.

(3) The licensee shall combine the parimutuel pools of the satellite location with those of the racing facility for the purpose of determining odds and computing payoffs. The amount wagered at the satellite location shall be combined with the amount wagered at the racing facility for the application of take out formulas and distribution as provided in RCW 67.16.102, 67.16.105, 67.16.170, and 67.16.175. A satellite extension of the licensee's racing facility shall be subject to the same application of the rules of racing as the licensee's racing facility. [1991 c 270 § 10; 1987 c 347 § 1.]

67.16.210 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

67.16.220 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

67.16.230 Satellite locations—Fees. The commission is authorized to establish and collect an annual fee for each separate satellite location. The fee to be collected from the licensee shall be set to reflect the commission's expected costs of approving, regulating, and monitoring each satellite location, provided commission revenues generated under RCW 67.16.105 from the licensee shall be credited annually towards the licensee's fee assessment under this section. [1991 c 270 § 11; 1987 c 347 § 7.]

67.16.240 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

67.16.250 Washington thoroughbred racing fund. The Washington thoroughbred racing fund is created in the state treasury. All receipts derived under RCW 67.16.105(4) from licensees who are nonprofit corporations and whose race meets are thirty days or more shall be deposited into the account. Moneys in the account may be spent only after legislative appropriation. Expenditures from the account shall be expended to benefit and support interim continuation of thoroughbred racing, capital construction of a new race track facility, and programs enhancing the general welfare, safety, and advancement of the Washington thoroughbred racing industry. [1991 c 270 § 12.]

67.16.910 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

67.16.911 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 67.28

PUBLIC STADIUM, CONVENTION, PERFORMING ARTS, AND VISUAL ARTS FACILITIES

Sections	Definitions.
67.28.080	Definitions.
67.28.090	Stadium commission created—Appointment and selection of members—Expenses and per diem.
67.28.125	Selling convention center facilities—Smaller counties within national scenic areas.
67.28.180	Special excise tax authorized—Hotel, motel, rooming house, trailer camp, etc., charges—Conditions imposed upon levies. (Effective until January 1, 1992.)
67.28.180	Special excise tax authorized—Hotel, motel, rooming house, trailer camp, etc., charges—Conditions imposed upon levies. (Effective January 1, 1992.)
67.28.200	Special excise tax authorized—Exemptions, rules and regulations may be established—Collection.

- 67.28.210 Special excise tax authorized—Proceeds credited to special fund—Contribution on use—Investment.
- 67.28.230 Repealed.
- 67.28.240 Special excise tax authorized—Hotel, motel, rooming house, trailer camp, etc., charges—Conditions imposed upon levies.
- 67.28.260 Special excise tax authorized—Counties bordering Pacific ocean—Hotel, rooming house, tourist court, etc., charges.
- 67.28.270 Friday Harbor—Tax for county fair facilities.

67.28.080 Definitions. In any county located in whole or in part in a national scenic area and the population of which county is less than 20,000, a convention center facility may include a hotel, destination resort, conference center, or similar or related facility. A convention center facility may include the land on which any of the foregoing structures or facilities are sited. A convention center facility may also include land necessary for the operation of a convention center facility.

"Municipality" as used in this chapter means any county, city or town of the state of Washington.

"Person" as used in this chapter means the federal government or any agency thereof, the state or any agency, subdivision, taxing district or municipal corporation thereof other than county, city or town, any private corporation, partnership, association, or individual. [1991 c 357 § 1; 1967 c 236 § 1.]

Reviser's note: Throughout this chapter, "this act" has been changed to "this chapter". This act, 1967 c 236, is codified as this chapter and RCW 82.02.020.

Effective date, application—1991 c 357: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect after immediately [effect immediately (May 21, 1991)]. This act applies retroactively to all actions taken under chapter 67.28 RCW on or after January 1, 1990." [1991 c 357 § 5.]

67.28.090 Stadium commission created—Appointment and selection of members—Expenses and per diem. There is created a stadium commission to consist of six members to be selected as follows:

The governor shall appoint a chair and one other member of the commission.

Any county with a population of one hundred twenty-five thousand or more may within ninety days following June 8, 1967 submit to the governor a request that the commission conduct a study and investigation as provided in RCW 67.28.100 relative to the construction of a stadium within such county. Such request shall be supported by plans and other relevant information.

Within two weeks of the end of the ninety-day period, the governor and/or the two members of the commission appointed by him or her shall meet and consider any such requests, and shall accept that request which in their sole discretion appears to present the most feasible plan.

Thereupon, the county legislative authority of the county whose request is accepted shall select two members from its body as members of the commission, and the mayor of the city having the largest population in such county shall appoint two members from such city's legislative body to the commission.

The commission shall meet at such time or times as may be designated either by the governor or by the chair of the board, and shall serve without compensation. They shall receive, for time spent on the commission, per diem and mileage allowances in conformity with the amounts allowed for legislators under the provisions of RCW 44.04.120. [1991 c 363 § 138; 1967 c 236 § 2.]

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

67.28.125 Selling convention center facilities—Smaller counties within national scenic areas. The provisions of this section shall apply to any municipality in any county located in whole or in part in a national scenic area when the population of the county is less than 20,000. The provisions of this section shall also apply to the county when the county contains in whole or in part a national scenic area and the population of the county is less than 20,000.

(1) The legislative body of any municipality or the county legislative authority is authorized to sell to any public or private person, including a corporation, partnership, joint venture, or any other business entity, any convention center facility it owns in whole or in part.

(2) The price and other terms and conditions shall be as the legislative body or authority shall determine. [1991 c 357 § 2.]

Effective date, application—1991 c 357: See note following RCW 67.28.080.

Competitive bids—Inapplicability to certain convention centers: RCW 36.32.267.

67.28.180 Special excise tax authorized—Hotel, motel, rooming house, trailer camp, etc., charges—Conditions imposed upon levies. (Effective until January 1, 1992.) (1) Subject to the conditions set forth in subsections (2) and (3) of this section, the legislative body of any county or any city, is authorized to levy and collect a special excise tax of not to exceed two percent on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property: PROVIDED, That it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or to enjoy the same.

(2) Any levy authorized by this section shall be subject to the following:

(a) Any county ordinance or resolution adopted pursuant to this section shall contain, in addition to all other provisions required to conform to this chapter, a provision allowing a credit against the county tax for the full amount of any city tax imposed pursuant to this section upon the same taxable event.

(b) In the event that any county has levied the tax authorized by this section and has, prior to June 26, 1975, either pledged the tax revenues for payment of

principal and interest on city revenue or general obligation bonds authorized and issued pursuant to RCW 67.28.150 through 67.28.160 or has authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160, such county shall be exempt from the provisions of (a) of this subsection, to the extent that the tax revenues are pledged for payment of principal and interest on bonds issued at any time pursuant to the provisions of RCW 67.28.150 through 67.28.160: PROVIDED, That so much of such pledged tax revenues, together with any investment earnings thereon, not immediately necessary for actual payment of principal and interest on such bonds may be used: (i) In any county with a population of one million or more, for repayment either of limited tax levy general obligation bonds or of any county fund or account from which a loan was made, the proceeds from the bonds or loan being used to pay for constructing, installing, improving, and equipping stadium capital improvement projects, and to pay for any engineering, planning, financial, legal and professional services incident to the development of such stadium capital improvement projects, regardless of the date the debt for such capital improvement projects was or may be incurred; or (ii) in other counties, for county-owned facilities for agricultural promotion.

As used in this subsection (2)(b), "capital improvement projects" may include, but not be limited to a stadium restaurant facility, restroom facilities, artificial turf system, seating facilities, parking facilities and scoreboard and information system adjacent to or within a county owned stadium, together with equipment, utilities, accessories and appurtenances necessary thereto. The stadium restaurant authorized by this subsection (2)(b) shall be operated by a private concessionaire under a contract with the county.

(c) No city within a county exempt under subsection (2)(b) of this section may levy the tax authorized by this section so long as said county is so exempt: PROVIDED, That in the event that any city in such county has levied the tax authorized by this section and has, prior to June 26, 1975, authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160, such city may levy the tax so long as and to the extent that the tax revenues are pledged for payment of principal and interest on bonds issued pursuant to the provisions of RCW 67.28.150 through 67.28.160.

(3) Any levy authorized by this section by a county that has levied the tax authorized by this section and has, prior to June 26, 1975, either pledged the tax revenues for payment of principal and interest on city revenue or general obligation bonds authorized and issued pursuant to RCW 67.28.150 through 67.28.160 or has authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160 shall be subject to the following:

(a) Taxes collected under this section in any calendar year in excess of five million three hundred thousand dollars shall only be used for art museums, cultural museums, the arts, and/or the performing arts.

(b) No taxes collected under this section may be used for the operation or maintenance of a public stadium that is financed directly or indirectly by bonds to which the tax is pledged. Expenditures for operation or maintenance include all expenditures other than expenditures that directly result in new fixed assets or that directly increase the capacity, life span, or operating economy of existing fixed assets.

(c) No ad valorem property taxes may be used for debt service on bonds issued for a public stadium that is financed by bonds to which the tax is pledged, unless the taxes collected under this section are or are projected to be insufficient to meet debt service requirements on such bonds.

(d) If a substantial part of the operation and management of a public stadium that is financed directly or indirectly by bonds to which the tax is pledged is performed by a nonpublic entity or if a public stadium is sold that is financed directly or indirectly by bonds to which the tax is pledged, any bonds to which the tax is pledged shall be retired.

(e) The county shall not lease a public stadium that is financed directly or indirectly by bonds to which the tax is pledged to, or authorize the use of the public stadium by, a professional major league sports franchise unless the sports franchise gives the right of first refusal to purchase the sports franchise, upon its sale, to local government. This subsection (3)(e) does not apply to contracts in existence on April 1, 1986.

If a court of competent jurisdiction declares any provision of this subsection (3) invalid, then that invalid provision shall be null and void and the remainder of this section is not affected. [1991 c 363 § 139; 1987 c 483 § 1; 1986 c 104 § 1; 1985 c 272 § 1; 1975 1st ex.s. c 225 § 1; 1973 2nd ex.s. c 34 § 5; 1970 ex.s. c 89 § 1; 1967 c 236 § 11.]

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

Effective date—1986 c 104: "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 April 1, 1986." [1986 c 104 § 2.]

Severability—1985 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." [1985 c 272 § 2.]

Special excise tax

authorized for convention or trade facilities: RCW 67.40.100.

imposed in King county for state convention and trade center: RCW 67.40.090.

67.28.180 Special excise tax authorized—**Hotel, motel, rooming house, trailer camp, etc., charges**—**Conditions imposed upon levies.** (Effective January 1, 1992.) (1) Subject to the conditions set forth in subsections (2) and (3) of this section, the legislative body of any county or any city, is authorized to levy and collect a special excise tax of not to exceed two percent on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property: PROVIDED, That it shall be presumed that

the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or to enjoy the same.

(2) Any levy authorized by this section shall be subject to the following:

(a) Any county ordinance or resolution adopted pursuant to this section shall contain, in addition to all other provisions required to conform to this chapter, a provision allowing a credit against the county tax for the full amount of any city tax imposed pursuant to this section upon the same taxable event.

(b) In the event that any county has levied the tax authorized by this section and has, prior to June 26, 1975, either pledged the tax revenues for payment of principal and interest on city revenue or general obligation bonds authorized and issued pursuant to RCW 67.28.150 through 67.28.160 or has authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160, such county shall be exempt from the provisions of (a) of this subsection, to the extent that the tax revenues are pledged for payment of principal and interest on bonds issued at any time pursuant to the provisions of RCW 67.28.150 through 67.28.160: PROVIDED, That so much of such pledged tax revenues, together with any investment earnings thereon, not immediately necessary for actual payment of principal and interest on such bonds may be used: (i) In any county with a population of one million or more, for repayment either of limited tax levy general obligation bonds or of any county fund or account from which a loan was made, the proceeds from the bonds or loan being used to pay for constructing, installing, improving, and equipping stadium capital improvement projects, and to pay for any engineering, planning, financial, legal and professional services incident to the development of such stadium capital improvement projects, regardless of the date the debt for such capital improvement projects was or may be incurred; or (ii) in other counties, for county-owned facilities for agricultural promotion. A county is exempt under this subsection in respect to city revenue or general obligation bonds issued after April 1, 1991, only if such bonds mature before January 1, 2013.

As used in this subsection (2)(b), "capital improvement projects" may include, but not be limited to a stadium restaurant facility, restroom facilities, artificial turf system, seating facilities, parking facilities and scoreboard and information system adjacent to or within a county owned stadium, together with equipment, utilities, accessories and appurtenances necessary thereto. The stadium restaurant authorized by this subsection (2)(b) shall be operated by a private concessionaire under a contract with the county.

(c) No city within a county exempt under subsection (2)(b) of this section may levy the tax authorized by this section so long as said county is so exempt: PROVIDED, That in the event that any city in such county has levied the tax authorized by this section and has, prior to June 26, 1975, authorized and issued revenue or general obligation bonds pursuant to the provisions of

RCW 67.28.150 through 67.28.160, such city may levy the tax so long as and to the extent that the tax revenues are pledged for payment of principal and interest on bonds issued pursuant to the provisions of RCW 67.28.150 through 67.28.160.

(3) Any levy authorized by this section by a county that has levied the tax authorized by this section and has, prior to June 26, 1975, either pledged the tax revenues for payment of principal and interest on city revenue or general obligation bonds authorized and issued pursuant to RCW 67.28.150 through 67.28.160 or has authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160 shall be subject to the following:

(a) Taxes collected under this section in any calendar year in excess of five million three hundred thousand dollars shall only be used as follows:

(i) Seventy-five percent from January 1, 1992, through December 31, 2000, and seventy percent from January 1, 2001, through December 31, 2012, for art museums, cultural museums, heritage museums, the arts, and the performing arts. Moneys spent under this subsection (3)(a)(i) shall be used for the purposes of this subsection (3)(a)(i) in all parts of the county.

(ii) Twenty-five percent from January 1, 1992, through December 31, 2000, and thirty percent from January 1, 2001, through December 31, 2012, for the following purposes and in a manner reflecting the following order of priority: Stadium capital improvements, as defined in subsection (2)(b) of this section; acquisition of open space lands; youth sports activities; and tourism promotion.

(b) At least seventy percent of moneys spent under (a)(i) of this subsection for the period January 1, 1992, through December 31, 2000, shall be used only for the purchase, design, construction, and remodeling of performing arts, visual arts, heritage, and cultural facilities, and for the purchase of fixed assets that will benefit art, heritage, and cultural organizations. For purposes of this subsection, fixed assets are tangible objects such as machinery and other equipment intended to be held or used for ten years or more. Moneys received under this subsection (3)(b) may be used for payment of principal and interest on bonds issued for capital projects. Qualifying organizations receiving moneys under this subsection (3)(b) must be financially stable and have at least the following:

(i) A legally constituted and working board of directors;

(ii) A record of artistic, heritage, or cultural accomplishments;

(iii) Been in existence and operating for at least two years;

(iv) Demonstrated ability to maintain net current liabilities at less than thirty percent of general operating expenses;

(v) Demonstrated ability to sustain operational capacity subsequent to completion of projects or purchase of machinery and equipment; and

(vi) Evidence that there has been independent financial review of the organization.

(c) At least forty percent of the revenues distributed pursuant to (a)(i) of this subsection for the period January 1, 2001, through December 31, 2012, shall be deposited in an account and shall be used to establish an endowment. Principal in the account shall remain permanent and irreducible. The earnings from investments of balances in the account may only be used for the purposes of (a)(i) of this subsection.

(d) School districts and schools shall not receive revenues distributed pursuant to (a)(i) of this subsection.

(e) Moneys distributed to art museums, cultural museums, heritage museums, the arts, and the performing arts, and moneys distributed for tourism promotion shall be in addition to and may not be used to replace or supplant any other funding by the legislative body of the county.

(f) As used in this section, "tourism promotion" includes activities intended to attract visitors for overnight stays, arts, heritage, and cultural events, and recreational, professional, and amateur sports events. Moneys allocated to tourism promotion in a class AA county shall be allocated to nonprofit organizations formed for the express purpose of tourism promotion in the county. Such organizations shall use moneys from the taxes to promote events in all parts of the class AA county.

(g) No taxes collected under this section may be used for the operation or maintenance of a public stadium that is financed directly or indirectly by bonds to which the tax is pledged. Expenditures for operation or maintenance include all expenditures other than expenditures that directly result in new fixed assets or that directly increase the capacity, life span, or operating economy of existing fixed assets.

(h) No ad valorem property taxes may be used for debt service on bonds issued for a public stadium that is financed by bonds to which the tax is pledged, unless the taxes collected under this section are or are projected to be insufficient to meet debt service requirements on such bonds.

(i) If a substantial part of the operation and management of a public stadium that is financed directly or indirectly by bonds to which the tax is pledged is performed by a nonpublic entity or if a public stadium is sold that is financed directly or indirectly by bonds to which the tax is pledged, any bonds to which the tax is pledged shall be retired.

(j) The county shall not lease a public stadium that is financed directly or indirectly by bonds to which the tax is pledged to, or authorize the use of the public stadium by, a professional major league sports franchise unless the sports franchise gives the right of first refusal to purchase the sports franchise, upon its sale, to local government. This subsection (3)(j) does not apply to contracts in existence on April 1, 1986.

If a court of competent jurisdiction declares any provision of this subsection (3) invalid, then that invalid provision shall be null and void and the remainder of this section is not affected. [1991 c 363 § 139; 1991 c 336 § 1; 1987 c 483 § 1; 1986 c 104 § 1; 1985 c 272 § 1; 1975 1st ex.s. c 225 § 1; 1973 2nd ex.s. c 34 § 5; 1970 ex.s. c 89 § 1; 1967 c 236 § 11.]

Reviser's note: This section was amended by 1991 c 336 § 1 and by 1991 c 363 § 139, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1991 c 336: "This act shall take effect January 1, 1992." [1991 c 336 § 3.]

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

Effective date—1986 c 104: "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 April 1, 1986." [1986 c 104 § 2.]

Severability—1985 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." [1985 c 272 § 2.]

Contracts for marketing facility and services—Matching nonstate funds: RCW 67.40.120.

Special excise tax authorized for convention or trade facilities: RCW 67.40.100.
imposed in King county for state convention and trade center: RCW 67.40.090.

67.28.200 Special excise tax authorized—Exemptions, rules and regulations may be established—Collection. The legislative body of any county or city may establish reasonable exemptions and may adopt such reasonable rules and regulations as may be necessary for the levy and collection of the taxes authorized by RCW 67.28.180, 67.28.182, and *67.28.230 through 67.28.250, and 67.28.260. The department of revenue shall perform the collection of such taxes on behalf of such county or city at no cost to such county or city. [1991 c 331 § 2; 1988 ex.s. c 1 § 23; 1987 c 483 § 3; 1970 ex.s. c 89 § 2; 1967 c 236 § 13.]

***Reviser's note:** RCW 67.28.230 was repealed by 1991 c 331 § 4.

67.28.210 Special excise tax authorized—Proceeds credited to special fund—Limitation on use—Investment. All taxes levied and collected under RCW 67.28.180, *67.28.230, 67.28.240, and 67.28.260 shall be credited to a special fund in the treasury of the county or city imposing such tax. Such taxes shall be levied only for the purpose of paying all or any part of the cost of acquisition, construction, or operating of stadium facilities, convention center facilities, performing arts center facilities, and/or visual arts center facilities or to pay or secure the payment of all or any portion of general obligation bonds or revenue bonds issued for such purpose or purposes under this chapter, or to pay for advertising, publicizing, or otherwise distributing information for the purpose of attracting visitors and encouraging tourist expansion when a county or city has imposed such tax for such purpose, or as one of the purposes hereunder, and until withdrawn for use, the moneys accumulated in such fund or funds may be invested in interest bearing securities by the county or city treasurer in any manner authorized by law. In addition such taxes may be used to develop strategies to expand tourism: PROVIDED, That any county, and any city within a county, bordering upon Grays Harbor may use the proceeds of such taxes for construction and maintenance of a movable tall ships tourist attraction in cooperation with a tall ships restoration society, except to the extent that such proceeds

are used for payment of principal and interest on debt incurred prior to June 11, 1986: PROVIDED FURTHER, That any city or county may use the proceeds of such taxes for the refurbishing and operation of a steam railway for tourism promotion purposes. [1991 c 331 § 3; 1990 c 17 § 1; 1988 ex.s. c 1 § 24; 1986 c 308 § 1; 1979 ex.s. c 222 § 5; 1973 2nd ex.s. c 34 § 6; 1970 ex.s. c 89 § 3; 1967 c 236 § 14.]

***Reviser's note:** RCW 67.28.230 was repealed by 1991 c 331 § 4.

Severability—1986 c 308: "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." [1986 c 308 § 3.]

67.28.230 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

67.28.240 Special excise tax authorized—Hotel, motel, rooming house, trailer camp, etc., charges—Conditions imposed upon levies. (1) The legislative body of a county that qualified under RCW 67.28.180(2)(b) other than a county with a population of one million or more and the legislative bodies of cities in the qualifying county are each authorized to levy and collect a special excise tax of two percent on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property. For the purposes of this tax, it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or to enjoy the same.

(2) No city may impose the special excise tax authorized in subsection (1) of this section during the time the city is imposing the tax under RCW 67.28.180, and no county may impose the special excise tax authorized in subsection (1) of this section until such time as those cities within the county containing at least one-half of the total incorporated population have imposed the tax.

(3) Any county ordinance or resolution adopted under this section shall conform, in addition to all other provisions required to conform to this chapter, a provision allowing a credit against the county tax for the full amount of any city tax imposed under this section upon the same taxable event.

(4) Any seller, as defined in RCW 82.08.010, who is required to collect any tax under this section shall pay over such tax to the county or city as provided in RCW 67.28.200. The deduction from state taxes under RCW 67.28.190 does not apply to taxes imposed under this section. [1991 c 363 § 140; 1988 ex.s. c 1 § 21.]

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

67.28.260 Special excise tax authorized—Counties bordering Pacific ocean—Hotel, rooming house, tourist court, etc., charges. (1) The legislative body of any city bordering on the Pacific Ocean with a population of

not less than one thousand is authorized to levy and collect a special excise tax of not to exceed three percent on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property. For the purposes of this tax, it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or to enjoy the same.

(2) The legislative body of the county in which a city described in subsection (1) of this section is located is authorized to levy and collect a special excise tax within such county of not to exceed three percent on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property. For the purposes of this tax, it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or to enjoy the same.

(3) In the event a tax is levied under both subsections (1) and (2) of this section, the amount levied under (1) of this section [subsection] shall be credited against the amount levied under (2) of this section [subsection] such that the aggregate amount levied under this section cannot exceed three percent on the applicable sale or charge.

(4) Any seller, as defined in RCW 82.08.010, who is required to collect a tax under this section shall pay over such tax to the city or county, as applicable, as provided in RCW 67.28.200. The deduction from state taxes under RCW 67.28.190 does not apply to taxes imposed under this section. [1991 c 331 § 1.]

67.28.270 Friday Harbor—Tax for county fair facilities. In addition to the other uses authorized in this chapter, any city with a population of not less than one thousand people located on one of the San Juan islands or the county within which such city is located may impose the tax and use the tax proceeds provided herein for the acquisition, construction, or operation of publicly owned facilities that are used either for county fairs occurring no more than once a year and not extending over a period of more than seven days or to mitigate the impacts of tourism. [1991 c 357 § 4.]

Effective date, application—1991 c 357: See note following RCW 67.28.080.

Chapter 67.40

CONVENTION AND TRADE FACILITIES

Sections

67.40.030	General obligation bonds—Authorized—Appropriation required.
67.40.040	Deposit of proceeds in state convention and trade center account and appropriate subaccounts—Credit against future borrowings—Use.

- 67.40.045 Authorization to borrow from state treasury for project completion costs—Limits—"Project completion" defined—Legislative intent—Application.
- 67.40.090 Special excise tax imposed in King county—Hotel, motel, rooming house, trailer camp, etc., charges—Rates—Proceeds.
- 67.40.100 Limitation on license fees and taxes on hotels, motels, rooming houses, trailer camps, etc.—Special excise tax authorized for convention and trade facilities—Conditions.
- 67.40.120 Contracts for marketing facility and services—Matching nonstate funds. (Effective January 1, 1992.)

67.40.030 General obligation bonds—Authorized—Appropriation required. For the purpose of providing funds for the state convention and trade center, the state finance committee is authorized to issue, upon request of the corporation formed under RCW 67.40.020 and in one or more offerings, general obligation bonds of the state of Washington in the sum of one hundred sixty million, seven hundred sixty-five thousand dollars, or so much thereof as may be required, to finance this project and all costs incidental thereto, to capitalize all or a portion of interest during construction, to provide for expansion, renovation, exterior cleanup and repair of the Eagles building, conversion of various retail and other space to meeting rooms, and contingency costs of the center, purchase of the McKay Parcel as defined in the property and purchase agreement entered into by the corporation on June 12, 1986, development of low-income housing and to reimburse the general fund for expenditures in support of the project. The state finance committee may make such bond covenants as it deems necessary to carry out the purposes of this section and this chapter. No bonds authorized in this section may be offered for sale without prior legislative appropriation. [1990 c 181 § 1; 1988 ex.s. c 1 § 3; 1987 1st ex.s. c 3 § 12; 1985 c 233 § 1; 1983 2nd ex.s. c 1 § 3; 1982 c 34 § 3.]

Severability—1987 1st ex.s. c 3: See RCW 43.99G.901.

67.40.040 Deposit of proceeds in state convention and trade center account and appropriate subaccounts—Credit against future borrowings—Use. (1) The proceeds from the sale of the bonds authorized in RCW 67.40.030, proceeds of the tax imposed under RCW 67.40.090, and all other moneys received by the state convention and trade center from any public or private source which are intended to fund the acquisition, design, construction, expansion, exterior cleanup and repair of the Eagles building, conversion of various retail and other space to meeting rooms, purchase of the land and building known as the McKay Parcel, development of low-income housing, or renovation of the center, shall be deposited in the state convention and trade center account hereby created in the state treasury and in such subaccounts as are deemed appropriate by the directors of the corporation.

(2) Moneys in the account, including unanticipated revenues under RCW 43.79.270, shall be used exclusively for the following purposes in the following priority:

(a) For reimbursement of the state general fund under RCW 67.40.060;

(b) After appropriation by statute:

(i) For payment of expenses incurred in the issuance and sale of the bonds issued under RCW 67.40.030;

(ii) For acquisition, design, and construction of the state convention and trade center; and

(iii) For reimbursement of any expenditures from the state general fund in support of the state convention and trade center; and

(c) For transfer to the state convention and trade center operations account.

(3) The corporation shall identify with specificity those facilities of the state convention and trade center that are to be financed with proceeds of general obligation bonds, the interest on which is intended to be excluded from gross income for federal income tax purposes. The corporation shall not permit the extent or manner of private business use of those bond-financed facilities to be inconsistent with treatment of such bonds as governmental bonds under applicable provisions of the Internal Revenue Code of 1986, as amended. [1991 1st sp.s. c 13 § 11; 1990 c 181 § 2; 1988 ex.s. c 1 § 4; 1987 1st ex.s. c 8 § 4; 1985 c 57 § 66; 1983 2nd ex.s. c 1 § 4; 1982 c 34 § 4.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

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

67.40.045 Authorization to borrow from state treasury for project completion costs—Limits—"Project completion" defined—Legislative intent—Application. (1) The director of financial management, in consultation with the chairpersons of the ways and means committees of the senate and house of representatives, may authorize temporary borrowing from the state treasury for the purpose of covering cash deficiencies in the state convention and trade center account resulting from project completion costs. Subject to the conditions and limitations provided in this section, lines of credit may be authorized at times and in amounts as the director of financial management determines are advisable to meet current and/or anticipated cash deficiencies. Each authorization shall distinctly specify the maximum amount of cash deficiency which may be incurred and the maximum time period during which the cash deficiency may continue. The total amount of borrowing outstanding at any time shall never exceed the lesser of:

(a) \$58,275,000; or

(b) An amount, as determined by the director of financial management from time to time, which is necessary to provide for payment of project completion costs.

(2) Unless the due date under this subsection is extended by statute, all amounts borrowed under the authority of this section shall be repaid to the state treasury by June 30, 1993, together with interest at a rate determined by the state treasurer to be equivalent to the return on investments of the state treasury during the period the amounts are borrowed. Borrowing may be

authorized from any excess balances in the state treasury, except the agricultural permanent fund, the Millersylvania park permanent fund, the state university permanent fund, the normal school permanent fund, the permanent common school fund, and the scientific permanent fund.

(3) As used in this section, "project completion" means:

(a) All remaining development, construction, and administrative costs related to completion of the convention center; and

(b) Costs of the McKay building demolition, Eagles building rehabilitation, development of low-income housing, and construction of rentable retail space and an operable parking garage.

(4) It is the intent of the legislature that project completion costs be paid ultimately from the following sources:

(a) \$29,250,000 to be received by the corporation under an agreement and settlement with Industrial Indemnity Co.;

(b) \$1,070,000 to be received by the corporation as a contribution from the city of Seattle;

(c) \$20,000,000 from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(d) \$4,765,000 for contingencies and project reserves from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(e) \$13,000,000 for conversion of various retail and other space to meeting rooms, from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(f) \$13,300,000 for expansion at the 900 level of the facility, from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(g) \$10,400,000 for purchase of the land and building known as the McKay Parcel, for development of low-income housing, and for development, construction, and administrative costs related to completion of the state convention and trade center, including settlement costs related to construction litigation, from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(h) \$300,000 for Eagles building exterior cleanup and repair, from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090; and

(i) The proceeds of the sale of any properties owned by the state convention and trade center that are not planned for use for state convention and trade center operations, with the proceeds to be used for development, construction, and administrative costs related to completion of the state convention and trade center, including settlement costs related to construction litigation.

(5) The borrowing authority provided in this section is in addition to the authority to borrow from the general fund to meet the bond retirement and interest requirements set forth in RCW 67.40.060. To the extent the

specific conditions and limitations provided in this section conflict with the general conditions and limitations provided for temporary cash deficiencies in RCW 43.88.260 (section 7, chapter 502, Laws of 1987), the specific conditions and limitations in this section shall govern. [1991 c 2 § 1; 1990 c 181 § 3; 1988 ex.s. c 1 § 9; 1987 1st ex.s. c 8 § 1.]

Severability—1991 c 2: "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." [1991 c 2 § 5.]

67.40.090 Special excise tax imposed in King county—Hotel, motel, rooming house, trailer camp, etc., charges—Rates—Proceeds. (1) Commencing April 1, 1982, there is imposed, and the department of revenue shall collect, in King county a special excise tax on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, or trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, except that no such tax may be levied on any premises having fewer than sixty lodging units. It shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes rental or lease of real property and not a mere license to use or enjoy the same. The legislature on behalf of the state pledges to maintain and continue this tax until the bonds authorized by this chapter are fully redeemed, both principal and interest.

(2) The rate of the tax imposed under this section shall be as provided in this subsection.

(a) From April 1, 1982, through December 31, 1982, inclusive, the rate shall be three percent in the city of Seattle and two percent in King county outside the city of Seattle.

(b) From January 1, 1983, through June 30, 1988, inclusive, the rate shall be five percent in the city of Seattle and two percent in King county outside the city of Seattle.

(c) From July 1, 1988, through December 31, 1992, inclusive, the rate shall be six percent in the city of Seattle and two and four-tenths percent in King county outside the city of Seattle.

(d) From January 1, 1993, until the change date, the rate shall be seven percent in the city of Seattle and two and eight-tenths percent in King county outside the city of Seattle.

(e) On and after the change date, the rate shall be six percent in the city of Seattle and two and four-tenths percent in King county outside the city of Seattle.

(f) As used in this section, "change date" means the October 1st next occurring after certification occurs under (g) of this subsection.

(g) On August 1st of 1998 and of each year thereafter until certification occurs under this subsection, the state treasurer shall determine whether seventy-one and forty-three one-hundredths percent of the revenues actually collected and deposited with the state treasurer for the tax imposed under this section during the twelve

months ending June 30th of that year, excluding penalties and interest, exceeds the amount actually paid in debt service during the same period for bonds issued under RCW 67.40.030 by at least two million dollars. If so, the state treasurer shall so certify to the department of revenue.

(3) The proceeds of the special excise tax shall be deposited as provided in this subsection.

(a) Through June 30, 1988, inclusive, all proceeds shall be deposited in the state convention and trade center account.

(b) From July 1, 1988, through December 31, 1992, inclusive, eighty-three and thirty-three one-hundredths percent of the proceeds shall be deposited in the state convention and trade center account. The remainder shall be deposited in the state convention and trade center operations account.

(c) From January 1, 1993, until the change date, eighty-five and seventy-one-hundredths percent of the proceeds shall be deposited in the state convention and trade center account. The remainder shall be deposited in the state convention and trade center operations account.

(d) On and after the change date, eighty-three and thirty-three one-hundredths percent of the proceeds shall be deposited in the state convention and trade center account. The remainder shall be deposited in the state convention and trade center operations account.

(4) Chapter 82.32 RCW applies to the tax imposed under this section. [1991 c 2 § 3; 1988 ex.s. c 1 § 6; 1987 1st ex.s. c 8 § 6; 1982 c 34 § 9.]

Severability—1991 c 2: See note following RCW 67.40.045.

Intent—1988 ex.s. c 1 § 6: "The legislature intends that the additional revenue generated by the increase in the special excise tax from five to six percent in the city of Seattle and from two percent to two and four-tenths percent in King county outside the city of Seattle be used for marketing the facilities and services of the convention center, for promoting the locale as a convention and visitor destination, and for related activities. Actual use of these funds shall be determined through biennial appropriation by the legislature." [1988 ex.s. c 1 § 7.]

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

Special excise taxes authorized for public stadium, convention, and arts facilities: Chapter 67.28 RCW.

67.40.100 Limitation on license fees and taxes on hotels, motels, rooming houses, trailer camps, etc.—Special excise tax authorized for convention and trade facilities—Conditions. (1) Except as provided in chapters 67.28 and 82.14 RCW and subsection (2) of this section, after January 1, 1983, no city, town, or county in which the tax under RCW 67.40.090 is imposed may impose a license fee or tax on the act or privilege of engaging in business to furnish lodging by a hotel, rooming house, tourist court, motel, trailer camp, or similar facilities in excess of the rate imposed upon other persons engaged in the business of making sales at retail as that term is defined in chapter 82.04 RCW.

(2) A city incorporated before January 1, 1982, with a population over sixty thousand located in a county with a population over one million, other than the city of Seattle, may impose a special excise tax under the following conditions:

(a) The proceeds of the tax must be used for the acquisition, design, construction, and marketing of convention and trade facilities and may be used for and pledged to the payment of bonds, leases, or other obligations issued or incurred for such purposes. The proceeds of the tax may be used for maintenance and operation only as part of a budget which includes the use of the tax for debt service and marketing.

(b) The legislative body of the city, before imposing the tax, must authorize a complete study and investigation of the desirability and economic feasibility of the proposed convention and trade facilities.

(c) The rate of the tax shall not exceed three percent.

(d) The tax shall be imposed on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, or trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, except that no such tax may be levied on any premises having fewer than sixty lodging units. [1990 c 242 § 1; 1988 ex.s. c 1 § 25; 1982 c 34 § 10.]

Application—1990 c 242: "This 1990 amendment applies to all proceeds of the tax authorized under RCW 67.40.100(2), regardless of when levied or collected." [1990 c 242 § 2.]

67.40.120 Contracts for marketing facility and services—Matching nonstate funds. (Effective January 1, 1992.) The state convention and trade center corporation may contract with the Seattle-King county convention and visitors bureau for marketing the convention and trade center facility and services. Any contract with the Seattle-King county convention and visitors bureau shall include, but is not limited to, the following condition: Each dollar in convention and trade center operations account funds provided to the Seattle-King county convention and visitors bureau shall be matched by at least one dollar and ten cents in nonstate funds. "Nonstate funds" does not include funds received under RCW 67.28.180. [1991 c 336 § 2; 1988 ex.s. c 1 § 8.]

Effective date—1991 c 336: See note following RCW 67.28.180.

Chapter 67.70 STATE LOTTERY

Sections	
67.70.040	Powers and duties of commission.
67.70.220	Payment of prizes to minor.
67.70.900	Repealed.

67.70.040 Powers and duties of commission. The commission shall have the power, and it shall be its duty:

(1) To promulgate such rules governing the establishment and operation of a state lottery as it deems necessary and desirable in order that such a lottery be initiated at the earliest feasible and practicable time, and in order that such lottery produce the maximum amount of net revenues for the state consonant with the dignity of the state and the general welfare of the people. Such rules shall include, but shall not be limited to, the following:

(a) The type of lottery to be conducted which may include the selling of tickets or shares. The use of electronic or mechanical devices or video terminals which allow for individual play against such devices or terminals shall be prohibited. Approval of the legislature shall be required before entering any agreement with other state lotteries to conduct shared games;

(b) The price, or prices, of tickets or shares in the lottery;

(c) The numbers and sizes of the prizes on the winning tickets or shares;

(d) The manner of selecting the winning tickets or shares;

(e) The manner and time of payment of prizes to the holder of winning tickets or shares which, at the director's option, may be paid in lump sum amounts or installments over a period of years;

(f) The frequency of the drawings or selections of winning tickets or shares, without limitation;

(g) Without limit as to number, the type or types of locations at which tickets or shares may be sold;

(h) The method to be used in selling tickets or shares;

(i) The licensing of agents to sell or distribute tickets or shares, except that a person under the age of eighteen shall not be licensed as an agent;

(j) The manner and amount of compensation, if any, to be paid licensed sales agents necessary to provide for the adequate availability of tickets or shares to prospective buyers and for the convenience of the public;

(k) The apportionment of the total revenues accruing from the sale of lottery tickets or shares and from all other sources among: (i) The payment of prizes to the holders of winning tickets or shares, which shall not be less than forty-five percent of the gross annual revenue from such lottery, less amounts of unclaimed prizes deposited in the general fund under RCW 67.70.190 during the fiscal year ending June 30, 1989, (ii) transfers to the lottery administrative account created by RCW 67.70.260, and (iii) transfer to the state's general fund. Transfers to the state general fund shall be made in compliance with RCW 43.01.050;

(l) Such other matters necessary or desirable for the efficient and economical operation and administration of the lottery and for the convenience of the purchasers of tickets or shares and the holders of winning tickets or shares.

(2) To ensure that in each place authorized to sell lottery tickets or shares, on the back of the ticket or share, and in any advertising or promotion there shall be conspicuously displayed an estimate of the probability of purchasing a winning ticket.

(3) To amend, repeal, or supplement any such rules from time to time as it deems necessary or desirable.

(4) To advise and make recommendations to the director for the operation and administration of the lottery. [1991 c 359 § 1; 1988 c 289 § 801; 1987 c 511 § 2; 1985 c 375 § 1; 1982 2nd ex.s. c 7 § 4.]

Severability—1988 c 289: See note following RCW 50.16.070.

67.70.220 Payment of prizes to minor. If the person entitled to a prize is under the age of eighteen years, and

such prize is less than five thousand dollars, the director may direct payment of the prize by delivery to an adult member of the minor's family or a guardian of the minor of a check or draft payable to the order of such minor. If the person entitled to a prize is under the age of eighteen years, and such prize is five thousand dollars or more, the director may direct payment to such minor by depositing the amount of the prize in any bank to the credit of an adult member of the minor's family or a guardian of the minor as custodian for such minor. The person so named as custodian shall have the same duties and powers as a person designated as a custodian in a manner prescribed by the Washington uniform transfers to minors act, chapter 11.114 RCW, and for the purposes of this section the terms "adult member of a minor's family," "guardian of a minor," and "bank" shall have the same meaning as in chapter 11.114 RCW. The commission and the director shall be discharged of all further liability upon payment of a prize to a minor pursuant to this section. [1991 c 193 § 30; 1985 c 7 § 128; 1982 2nd ex.s. c 7 § 22.]

Effective date—Severability—1991 c 193: See RCW 11.114.903 and 11.114.904.

67.70.900 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Title 68

CEMETERIES, MORGUES AND HUMAN REMAINS

Chapters

68.04	Definitions.
68.05	Cemetery board.
68.50	Human remains.
68.52	Public cemeteries and morgues.
68.54	Annexation and merger of cemetery districts.
68.60	Abandoned and historic cemeteries and historic graves.

Chapter 68.04

DEFINITIONS

Sections

68.04.040	"Cemetery".
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68.04.040 "Cemetery". "Cemetery" means: (1) 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:

(a) A burial park, for earth interments.

(b) A mausoleum, for crypt interments.

(c) A columbarium, for permanent cinerary interments; or

(2) For the purposes of chapter 68.60 RCW only, "cemetery" means any burial site, burial grounds, or place where five or more human remains are buried. Unless a cemetery is designated as a parcel of land identifiable and unique as a cemetery within the records of the county assessor, a cemetery's boundaries shall be

a minimum of ten feet in any direction from any burials therein. [1990 c 92 § 7; 1979 c 21 § 1; 1943 c 247 § 4; Rem. Supp. § 3778-4.]

Chapter 68.05 CEMETERY BOARD

Sections

68.05.410 Repealed.
68.05.420 Recodified as RCW 68.60.050.

68.05.410 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

68.05.420 Recodified as RCW 68.60.050. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 68.50 HUMAN REMAINS

Sections

68.50.030 Repealed.
68.50.032 Transportation of remains directed by coroner or medical examiner—Costs.

68.50.030 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

68.50.032 Transportation of remains directed by coroner or medical examiner—Costs. Whenever a coroner or medical examiner assumes jurisdiction over human remains and directs transportation of those remains by a funeral establishment, as defined in RCW 18.39-.010, the reasonable costs of transporting shall be borne by the county if: (1) The funeral establishment transporting the remains is not providing the funeral or disposition services; or (2) the funeral establishment providing the funeral or disposition services is required to transport the remains to a facility other than its own.

Except as provided in RCW 36.39.030, 68.52.030, and 73.08.070, any transportation costs or other costs incurred after the coroner or medical examiner has released jurisdiction over the human remains shall not be borne by the county. [1991 c 176 § 1.]

Chapter 68.52 PUBLIC CEMETERIES AND MORGUES

Sections

68.52.220 District commissioners—Election.
68.52.230 Repealed.
68.52.250 Special elections.

68.52.220 District commissioners—Election. The affairs of the district shall be managed by a board of cemetery district commissioners composed of three qualified registered voters 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 first day in January following 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 and have assumed office in accordance with RCW 29.04.170. At the next general district election, as provided in RCW 29.13.020, 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 and all subsequently elected cemetery commissioners shall have the same qualifications as required of the first three cemetery commissioners and are exempt from the requirements of chapter 42.17 RCW. The candidate receiving the highest number of votes shall serve for a term of six years beginning on the first day in January following; the candidate receiving the next higher number of votes shall serve for a term of four years from the date; and the candidate receiving the next higher number of votes shall serve for a term of two years from the date. Upon the expiration of their respective terms, all cemetery commissioners shall be elected for terms of six years to begin on the first day in January next succeeding the day of election and shall serve until their successors have been elected and qualified and assume office in accordance with RCW 29.04-.170. Elections shall be called, noticed, conducted and canvassed and in the same manner and 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. [1990 c 259 § 33; 1982 c 60 § 3; 1979 ex.s. c 126 § 40; 1947 c 6 § 14; Rem. Supp. 1947 § 3778-163. Formerly RCW 68.16.140.]

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

68.52.230 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

68.52.250 Special elections. Special elections submitting propositions to the registered voters of the district may be called at any time by resolution of the cemetery commissioners in accordance with RCW 29-.13.010 and 29.13.020, 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. [1990 c 259 § 34; 1947 c 6 § 17; Rem. Supp. 1947 § 3778-166. Formerly RCW 68.16.170.]

Qualifications of electors: RCW 29.07.070.

Chapter 68.54

ANNEXATION AND MERGER OF CEMETERY DISTRICTS

Sections

68.54.010	Annexation—Petition—Procedure.
68.54.020	Merger—Authorized.
68.54.030	Merger—Petition—Procedure—Contents.

68.54.010 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 68.52.210 or other cemetery district may be annexed to such cemetery district by petition of ten percent of the registered voters residing within the territory proposed to be annexed who voted in the last general municipal election. Such petition shall be filed with the cemetery commissioners of the cemetery district and if the cemetery commissioners shall concur in the 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 county legislative authority, and the rights and powers and duties of the county legislative authority, 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 county legislative authority 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 legislative authority if within the limits as outlined in RCW 68.52.310 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 legislative authority 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 the cemetery district. Upon the entry of the order of the county legislative authority incorporating such contiguous territory within such existing cemetery district, the territory shall become subject to the indebtedness, bonded or otherwise, of the existing district in like manner as the territory of the district. Should such petition be signed by sixty percent of the registered voters 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 county legislative authority shall enter its order incorporating such territory within the existing cemetery district. [1990 c 259 § 35;

1987 c 331 § 74; 1969 ex.s. c 78 § 1. Formerly RCW 68.18.010.]

68.54.020 Merger—Authorized. A cemetery district organized under chapter 68.52 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". [1990 c 259 § 36; 1969 ex.s. c 78 § 2. Formerly RCW 68.18.020.]

68.54.030 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 ten percent of the registered voters resident in the merging district who voted in the last general municipal election 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. [1990 c 259 § 37; 1969 ex.s. c 78 § 3. Formerly RCW 68.18.030.]

Chapter 68.60

ABANDONED AND HISTORIC CEMETERIES AND HISTORIC GRAVES

Sections

68.60.010	Definitions.
68.60.020	Dedication.
68.60.030	Preservation and maintenance corporations.
68.60.040	Protection of cemeteries—Penalties.
68.60.050	Protection of historic graves—Penalty.
68.60.060	Violations—Civil liability.

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

(1) "Abandoned cemetery" means a burial ground of the human dead in which the county assessor can find no record of an owner; or where the last known owner is deceased and lawful conveyance of the title has not been made; or in which a cemetery company, cemetery association, corporation, or other organization formed for the purposes of burying the human dead has either disbanded, been administratively dissolved by the secretary of state, or otherwise ceased to exist, and for which title has not been conveyed.

(2) "Historical cemetery" means any burial site or grounds which contain within them human remains buried prior to November 11, 1889; except that (a) cemeteries holding a valid certificate of authority to operate granted under RCW 68.05.115 and 68.05.215, (b) cemeteries owned or operated by any recognized religious

denomination that qualifies for an exemption from real estate taxation under RCW 84.36.020 on any of its churches or the ground upon which any of its churches are or will be built, and (c) cemeteries controlled or operated by a coroner, county, city, town, or cemetery district shall not be considered historical cemeteries.

(3) "Historic grave" means a grave or graves that were placed outside a cemetery dedicated pursuant to this chapter and to chapter 68.24 RCW, prior to June 7, 1990, except Indian graves and burial cairns protected under chapter 27.44 RCW.

(4) "Cemetery" has the meaning provided in RCW 68.04.040(2). [1990 c 92 § 1.]

68.60.020 Dedication. Any cemetery, historical cemetery, or historic grave that has not been dedicated pursuant to RCW 68.24.030 and 68.24.040 shall be considered permanently dedicated and subject to RCW 68.24.070. Removal of dedication may only be made pursuant to RCW 68.24.090 and 68.24.100. [1990 c 92 § 2.]

68.60.030 Preservation and maintenance corporations. The archaeological and historical division of the department of community development may grant by nontransferable certificate authority to maintain and protect an abandoned cemetery upon application made by a preservation organization which has been incorporated for the purpose of restoring, maintaining, and protecting an abandoned cemetery. Such authority shall be limited to the care, maintenance, restoration, protection, and historical preservation of the abandoned cemetery, and shall not include authority to make burials, unless specifically granted by the cemetery board.

Those preservation and maintenance corporations that are granted authority to maintain and protect an abandoned cemetery shall be entitled to hold and possess burial records, maps, and other historical documents as may exist. Maintenance and preservation corporations that are granted authority to maintain and protect an abandoned cemetery shall not be liable to those claiming burial rights, ancestral ownership, or to any other person or organization alleging to have control by any form of conveyance not previously recorded at the county auditor's office within the county in which the abandoned cemetery exists. Such organizations shall not be liable for any reasonable alterations made during restoration work on memorials, roadways, walkways, features, plantings, or any other detail of the abandoned cemetery.

Should the maintenance and preservation corporation be dissolved, the archaeological and historical division of the department of community development shall revoke the certificate of authority.

Maintenance and preservation corporations that are granted authority to maintain and protect an abandoned cemetery may establish care funds pursuant to chapter 68.44 RCW, and shall report in accordance with chapter 68.44 RCW to the state cemetery board. [1990 c 92 § 3.]

68.60.040 Protection of cemeteries—Penalties. (1) Every person who in a cemetery unlawfully or without right willfully 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 is guilty of a class C felony punishable under chapter 9A.20 RCW.

(2) Every person who in a cemetery unlawfully or without right willfully destroys, cuts, breaks, removes, or injures any building, statuary, ornamentation, tree, shrub, flower, or plant within the limits of a cemetery is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

(3) Every person who in a cemetery unlawfully or without right willfully opens a grave; removes personal effects of the decedent; removes all or portions of human remains; removes or damages caskets, surrounds, outer burial containers, or any other device used in making the original burial; transports unlawfully removed human remains from the cemetery; or knowingly receives unlawfully removed human remains from the cemetery is guilty of a class C felony punishable under chapter 9A.20 RCW. [1990 c 92 § 4.]

68.60.050 Protection of historic graves—Penalty. (1) Any person who knowingly removes, mutilates, defaces, injures, or destroys any historic grave shall be guilty of a class C felony punishable under chapter 9A.20 RCW. Persons disturbing historic graves through inadvertence, including disturbance through construction, shall reinter the human remains under the supervision of the cemetery board. Expenses to reinter such human remains are to be provided by the office of archaeology and historic preservation.

(2) This section does not apply to actions taken in the performance of official law enforcement duties.

(3) It shall be a complete defense in a prosecution under subsection (1) of this section if the defendant can prove by a preponderance of evidence that the alleged acts were accidental or inadvertent and that reasonable efforts were made to preserve the remains accidentally disturbed or discovered, and that the accidental discovery or disturbance was properly reported. [1989 c 44 § 5. Formerly RCW 68.05.420.]

Intent—1989 c 44: See RCW 27.44.030.

Captions not law—Liberal construction—1989 c 44: See RCW 27.44.900 and 27.44.901.

68.60.060 Violations—Civil liability. Any person who violates any provision of this chapter is liable in a civil action by and in the name of the state cemetery board to pay all damages occasioned by their unlawful acts. The sum recovered shall be applied in payment for the repair and restoration of the property injured or destroyed and to the care fund if one is established. [1990 c 92 § 5.]

Title 69
FOOD, DRUGS, COSMETICS, AND
POISONS

Chapters

- 69.04** Intrastate commerce in food, drugs, and cosmetics.
69.07 Washington food processing act.
69.30 Sanitary control of shellfish.
69.41 Legend drugs—Prescription drugs.
69.45 Drug samples.
69.50 Uniform controlled substances act.
69.60 Over-the-counter medications.

Chapter 69.04

INTRASTATE COMMERCE IN FOOD, DRUGS,
AND COSMETICS

(Formerly: Food, drug, and cosmetic act)

Sections

- 69.04.001 Statement of purpose.
 69.04.110 Embargo of articles.
 69.04.120 Procedure on embargo.
 69.04.398 Purpose of RCW 69.04.110, 69.04.392, 69.04.394, 69.04.396—Uniformity with federal laws and regulations—Application to production of kosher food products—Adoption of rules.
 69.04.780 Investigations—Samples—Right of entry—Verified statements.
 69.04.810 Access to records of intrastate carriers.
 69.04.880 Civil penalty.
 69.04.950 Transport of bulk foods—Definitions.
 69.04.955 Transport of bulk foods—Prohibitions—Exemption.
 69.04.960 Transport of bulk foods—Compatible substances—Cleaning vehicle or vessel—Vehicle or vessel marking.
 69.04.965 Transport of bulk foods—Transports not constituting violations.
 69.04.970 Transport of bulk foods—Substances rendering vehicle or vessel permanently unsuitable for bulk food transport—Procedures to rehabilitate vehicles and vessels.
 69.04.975 Transport of bulk foods—Rehabilitation of vehicles and vessels—Inspection—Certification—Marking—Costs.
 69.04.980 Transport of bulk foods—Penalties.

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 (a) potential injury by product use; (b) products that are adulterated; or (c) products that have been produced under unsanitary conditions, 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. [1991 c 162 § 1; 1945 c 257 § 2; Rem. Supp. 1945 § 6163–51.]

Conformity with federal regulations: RCW 69.04.190 and 69.04.200.

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, due to its being adulterated or misbranded, or to otherwise protect the public from injury, or possible injury, he or she 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. [1991 c 162 § 3; 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 or she shall, forthwith and without delay and in no event later than thirty days after the affixing of notice of its embargo, petition the superior court for an order affirming the embargo. The court then has jurisdiction, for cause shown and after prompt hearing to any claimant of the embargoed article, to issue an order which directs the removal of the embargo or the destruction or the correction and release of the 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 a bond as the court finds indicated in the circumstances. [1991 c 162 § 4; 1983 c 95 § 8; 1945 c 257 § 30; Rem. Supp. 1945 § 6163–79.]

69.04.398 Purpose of RCW 69.04.110, 69.04.392, 69.04.394, 69.04.396—Uniformity with federal laws and regulations—Application to production of kosher food products—Adoption of rules. (1) 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 rules 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 34.05 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-.05 RCW as enacted or hereafter amended.

(2) The provisions of subsection (1) of this section do not apply to rules adopted by the director as necessary to permit the production of kosher food products as defined in RCW 69.90.010.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section the director may adopt rules necessary to carry out the provisions of this chapter. [1991 c 162 § 5; 1986 c 203 § 18; 1975 1st ex.s. c 7 § 36.]

Severability—1986 c 203: See note following RCW 15.04.100.

69.04.780 Investigations—Samples—Right of entry—Verified statements. 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.

The director and the director's deputies, assistants, and inspectors are authorized to do all acts and things necessary to carry out the provisions of this chapter, including the taking of verified statements. Such department personnel are empowered to administer oaths of verification on the statements. [1991 c 162 § 6; 1945 c 257 § 96; Rem. Supp. 1945 § 6163-144.]

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 except for violations of RCW 69.04.955, penalties levied under RCW 69.04.980, the requirements of RCW 69.04.950 through 69.04.980, and the requirements of this section, 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. [1990 c 202 § 9; 1945 c 257 § 99; Rem. Supp. 1945 § 6163-147.]

69.04.880 Civil penalty. Whenever the director finds that a person has committed a violation of a provision of this chapter, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation per day. Each and every such violation shall be a separate and distinct offense. Imposition of the civil penalty shall be subject to a hearing in conformance with chapter 34.05 RCW. [1991 c 162 § 2.]

69.04.950 Transport of bulk foods—Definitions. The definitions in this section apply throughout RCW 69.04.950 through 69.04.980:

(1) "Food" means: (a) Any article used for food or drink for humans or used as a component of such an article; or (b) a food grade substance.

(2) "Food grade substance" means a substance which satisfies the requirements of the federal food, drug, and cosmetic act, meat inspection act, and poultry products act and rules promulgated thereunder as materials approved by the federal food and drug administration, United States department of agriculture, or United States environmental protection agency for use: (a) As an additive in food or drink for human consumption, (b) in sanitizing food or drink for human consumption, (c) in processing food or drink for human consumption, or (d) in maintaining equipment with food contact surfaces during which maintenance the substance is expected to come in contact with food or drink for human consumption.

(3) "In bulk form" means a food or substance which is not packaged or contained by anything other than the cargo carrying portion of the vehicle or vessel.

(4) "Vehicle or vessel" means a commercial vehicle or commercial vessel which has a gross weight of more than ten thousand pounds, is used to transport property, and is a motor vehicle, motor truck, trailer, railroad car, or vessel. [1990 c 202 § 1.]

Advisory committee—Report—1990 c 202: "The director of agriculture and the secretary of health shall examine, in consultation with an industry advisory committee, the potential hazards that may be posed to the public health by the transportation of food in other than bulk form in intrastate commerce. The director and secretary shall report the findings to the legislature by January 1, 1992, concerning the extent of the potential hazards, the frequency of mixed shipments of packaged food and nonfood items, the manner in which mixed shipments of packaged food and nonfood items are transported, and the incidents of food contamination in Washington state within the past five years. The findings shall include recommendations, if any, for regulating the transportation of food in other than bulk form.

The director and the secretary shall establish an industry advisory committee to provide advice regarding the examination required by this section. The director and the secretary shall jointly appoint not less than nine persons to the committee. These persons shall be representatives from the manufacturing, processing, wholesaling, distributing, and retailing sectors of the food industry." [1990 c 202 § 8.]

69.04.955 Transport of bulk foods—Prohibitions—Exemption. (1) Except as provided in RCW

69.04.965 and 69.04.975, no person may transport in intrastate commerce food in bulk form in the cargo carrying portion of a vehicle or vessel that has been used for transporting in bulk form a cargo other than food.

(2) No person may transport in intrastate commerce food in bulk form in the cargo carrying portion of a vehicle or vessel unless the vehicle or vessel is marked "Food or Food Compatible Only" in conformance with rules adopted under RCW 69.04.960.

(3) No person may transport in intrastate commerce a substance in bulk form other than food or a substance on a list adopted under RCW 69.04.960 in the cargo carrying portion of a vehicle or vessel marked "Food or Food Compatible Only."

(4) This section does not apply to the transportation of a raw agricultural commodity from the point of its production to the facility at which the commodity is first processed or packaged. [1990 c 202 § 2.]

69.04.960 Transport of bulk foods—Compatible substances—Cleaning vehicle or vessel—Vehicle or vessel marking. (1) The director of agriculture and the secretary of health shall jointly adopt by rule:

(a) A list of food compatible substances other than food that may be transported in bulk form as cargo in a vehicle or vessel that is also used, on separate occasions, to transport food in bulk form as cargo. The list shall contain those substances that the director and the secretary determine will not pose a health hazard if food in bulk form were transported in the vehicle or vessel after it transported the substance. In making this determination, the director and the secretary shall assume that some residual portion of the substance will remain in the cargo carrying portion of the vehicle or vessel when the food is transported;

(b) The procedures to be used to clean the vehicle or vessel after transporting the substance and prior to transporting the food;

(c) The form of the certificates to be used under RCW 69.04.965; and

(d) Requirements for the "Food or Food Compatible Only" marking which must be borne by a vehicle or vessel under RCW 69.04.955 or 69.04.965.

(2) In developing and adopting rules under this section and RCW 69.04.970, the director and the secretary shall consult with the secretary of transportation, the chief of the state patrol, the chair of the utilities and transportation commission, and representatives of the vehicle and vessel transportation industries, food processors, and agricultural commodity organizations. [1990 c 202 § 3.]

69.04.965 Transport of bulk foods—Transports not constituting violations. Transporting food as cargo in bulk form in intrastate commerce in a vehicle or vessel that has previously been used to transport in bulk form a cargo other than food does not constitute a violation of RCW 69.04.955 if:

(1) The cargo is a food compatible substance contained on the list adopted by the director and secretary under RCW 69.04.960;

(2) The vehicle or vessel has been cleaned as required by the rules adopted under RCW 69.04.960;

(3) The vehicle or vessel is marked "Food or Food Compatible" in conformance with rules adopted under RCW 69.04.960; and

(4) A certificate accompanies the vehicle or vessel when the food is transported by other than railroad car which attests, under penalty of perjury, to the fact that the vehicle or vessel has been cleaned as required by those rules and is dated and signed by the party responsible for that cleaning. Such certificates shall be maintained by the owner of the vehicle or vessel for not less than three years and shall be available for inspection concerning compliance with RCW 69.04.950 through 69.04.980. The director of agriculture and the secretary of health shall jointly adopt rules requiring such certificates for the transportation of food under this section by railroad car and requiring such certificates to be available for inspection concerning compliance with RCW 69.04.950 through 69.04.980. Forms for the certificates shall be provided by the department of agriculture. [1990 c 202 § 4.]

69.04.970 Transport of bulk foods—Substances rendering vehicle or vessel permanently unsuitable for bulk food transport—Procedures to rehabilitate vehicles and vessels. The director of agriculture and the secretary of health shall jointly adopt by rule:

(1) A list of substances which, if transported in bulk form in the cargo carrying portion of a vehicle or vessel, render the vehicle or vessel permanently unsuitable for use in transporting food in bulk form because the prospect that any residue might be present in the vehicle or vessel when it transports food poses a hazard to the public health; and

(2) Procedures to be used to rehabilitate a vehicle or vessel that has been used to transport a substance other than a substance contained on a list adopted under RCW 69.04.960 or under subsection (1) of this section. The procedures shall ensure that transporting food in the cargo carrying portion of the vehicle or vessel after its rehabilitation will not pose a health hazard. [1990 c 202 § 5.]

69.04.975 Transport of bulk foods—Rehabilitation of vehicles and vessels—Inspection—Certification—Marking—Costs. A vehicle or vessel that has been used to transport a substance other than food or a substance contained on the lists adopted by the director and secretary under RCW 69.04.960 and 69.04.970, may be rehabilitated and used to transport food only if:

(1) The vehicle or vessel is rehabilitated in accordance with the procedures established by the director and secretary in RCW 69.04.970;

(2) The vehicle or vessel is inspected by the department of agriculture, and the department determines that transporting food in the cargo carrying portion of the vehicle or vessel will not pose a health hazard;

(3) A certificate accompanies the vehicle or vessel certifying that the vehicle or vessel has been rehabilitated and inspected and is authorized to transport food,

and is dated and signed by the director of agriculture, or an authorized agent of the director. Such certificates shall be maintained for the life of the vehicle by the owner of the vehicle or vessel, and shall be available for inspection concerning compliance with RCW 69.04.950 through 69.04.980. Forms for the certificates shall be provided by the department of agriculture; and

(4) The vehicle or vessel is marked as required by RCW 69.04.955 or is marked and satisfies the requirements of RCW 69.04.965 which are not inconsistent with the rehabilitation authorized by this section.

No vehicle or vessel that has transported in bulk form a substance contained on the list adopted under RCW 69.04.970 qualifies for rehabilitation.

The cost of rehabilitation shall be borne by the vehicle or vessel owner. The director shall determine a reasonable fee to be imposed on the vehicle or vessel owner based on inspection, laboratory, and administrative costs incurred by the department in rehabilitating the vehicle or vessel. [1990 c 202 § 6.]

69.04.980 Transport of bulk foods—Penalties. A person who knowingly transports a cargo in violation of RCW 69.04.955 or who knowingly causes a cargo to be transported in violation of RCW 69.04.955 is subject to a civil penalty, as determined by the director of agriculture, for each such violation as follows:

(1) For a person's first violation or first violation in a period of five years, not more than five thousand dollars;

(2) For a person's second or subsequent violation within five years of a previous violation, not more than ten thousand dollars.

The director shall impose the penalty by an order which is subject to the provisions of chapter 34.05 RCW.

The director shall, wherever practical, secure the assistance of other public agencies, including but not limited to the department of health, the utilities and transportation commission, and the state patrol, in identifying and investigating potential violations of RCW 69.04.955. [1990 c 202 § 7.]

Chapter 69.07

WASHINGTON FOOD PROCESSING ACT

Sections

69.07.005	Legislative declaration.
69.07.010	Definitions.
69.07.040	Food processing license—Expiration date—Application, contents—Fee.
69.07.050	Renewal of license—Additional fee, when.
69.07.060	Denial, suspension or revocation of license—Grounds.
69.07.065	Suspension of license summarily—Reinstatement.
69.07.090	Repealed.
69.07.095	Authority of director and personnel.
69.07.130	Repealed.
69.07.135	Unlawful to sell or distribute food from unlicensed processor.
69.07.150	Violations—Penalties.

69.07.005 Legislative declaration. The processing of food intended for public consumption is important and

vital to the health and welfare both immediate and future and is hereby declared to be a business affected with the public interest. The provisions of this chapter [1991 c 137] are enacted to safeguard the consuming public from unsafe, adulterated, or misbranded food by requiring licensing of all food processing plants as defined in this chapter and setting forth the requirements for such licensing. [1991 c 137 § 1.]

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 any person, including ice, 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, building, room, area, facilities and the appurtenances thereto, in whole or in part, where food is prepared, handled or processed in any manner for distribution or sale for resale by retail outlets, restaurants, and any such other facility selling or distributing to the ultimate consumer: PROVIDED, That, as set forth herein, establishments 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;

(8) "Person" means an individual, partnership, corporation, or association. [1991 c 137 § 2; 1967 ex.s. c 121 § 1.]

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 a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates. Application for a license shall be on a form prescribed by the director and accompanied by a twenty-five 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. The application shall also specify the type of food to be processed and the method or nature of processing operation or preservation of that food and any other necessary information. 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.

Licenses shall be issued to cover only those products, processes, and operations specified in the license application and approved for licensing. Wherever a license holder wishes to engage in processing a type of food product that is different than the type specified on the application supporting the licensee's existing license and processing that type of food product would require a major addition to or modification of the licensee's processing facilities or has a high potential for harm, the licensee shall submit an amendment to the current license application. In such a case, the licensee may engage in processing the new type of food product only after the amendment has been approved by the department.

If upon investigation by the director, it is determined that a person is processing food for retail sale and is not under permit, license, or inspection by a local health authority, then that person may be considered a food processor and subject to the provisions of this chapter. [1991 c 137 § 3; 1988 c 5 § 1; 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 the expiration date as established by rule by the director, an additional fee of fifteen 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 or she has not operated a food processing plant or processed foods subsequent to the expiration of his or her

license. [1991 c 137 § 4; 1988 c 5 § 2; 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.

(5) Refused, neglected, or failed to comply with any provisions of chapter 69.04 RCW, Washington Food, Drug, and Cosmetic Act, or any regulations adopted thereunder.

The provisions of this section requiring that a hearing be conducted before an action may be taken against a license do not apply to an action taken under RCW 69.07.065. [1991 c 137 § 5; 1979 c 154 § 19; 1967 ex.s. c 121 § 6.]

Severability—1979 c 154: See note following RCW 15.49.330.

69.07.065 Suspension of license summarily—Reinstatement. (1) Whenever the director finds an establishment operating under conditions that constitute an immediate danger to public health or whenever the licensee or any employee of the licensee actively prevents the director or the director's representative, during an onsite inspection, from determining whether such a condition exists, the director may summarily suspend, pending a hearing, a license provided for in this chapter.

(2) Whenever a license is summarily suspended, the holder of the license shall be notified in writing that the license is, upon service of the notice, immediately suspended and that prompt opportunity for a hearing will be provided.

(3) Whenever a license is summarily suspended, food processing operations shall immediately cease. However, the director may reinstate the license when the condition that caused the suspension has been abated to the director's satisfaction. [1991 c 137 § 6.]

69.07.090 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

69.07.095 Authority of director and personnel. The director or the director's deputies, assistants, and inspectors are authorized to do all acts and things necessary to carry out the provisions of this chapter, including the taking of verified statements. The department personnel

are empowered to administer oaths of verification on the statement. [1991 c 137 § 7.]

69.07.130 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

69.07.135 Unlawful to sell or distribute food from unlicensed processor. It shall be unlawful to resell, to offer for resale, or to distribute for resale in intrastate commerce any food processed in a food processing plant, which has not obtained a license, as provided for in this chapter, once notification by the director has been given to the person or persons reselling, offering, or distributing food for resale, that said food is from an unlicensed processing operation. [1991 c 137 § 8.]

69.07.150 Violations—Penalties. (1) 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. A misdemeanor under this section is punishable to the same extent that a misdemeanor is punishable under RCW 9A.20.021 and a gross misdemeanor under this section is punishable to the same extent that a gross misdemeanor is punishable under RCW 9A.20.021.

(2) Whenever the director finds that a person has committed a violation of any of the provisions of this chapter, and that violation has not been punished pursuant to subsection (1) of this section, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation per day. Each violation shall be a separate and distinct offense. [1991 c 137 § 9; 1967 ex.s. c 121 § 15.]

Chapter 69.30

SANITARY CONTROL OF SHELLFISH

Sections

69.30.010	Definitions.
69.30.080	Certificates of approval—Denial, revocation, suspension, modification—Procedure.

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, mussels, 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 in commercial quantity or 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 in commercial quantity or for sale for human consumption.

(5) "Person" means any individual, partnership, firm, company, corporation, association, or the authorized agents of any such entities.

(6) "Department" means the state department of health.

(7) "Secretary" means the secretary of health or his or her authorized representatives.

(8) "Commercial quantity" means any quantity exceeding: (a) Forty pounds of mussels; (b) one hundred oysters; (c) fourteen horseclams; (d) six geoducks; or (e) fifty pounds of hard or soft shell clams. [1991 c 3 § 303; 1989 c 200 § 1; 1985 c 51 § 1; 1979 c 141 § 70; 1955 c 144 § 1.]

69.30.080 Certificates of approval—Denial, revocation, suspension, modification—Procedure. The department may deny, revoke, suspend, or modify a certificate of approval, license, or other necessary departmental approval in any case in which it determines there has been a failure or refusal to comply with this chapter or rules adopted under it. RCW 43.70.115 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding. [1991 c 3 § 304; 1989 c 175 § 125; 1979 c 141 § 71; 1955 c 144 § 8.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Chapter 69.41

LEGEND DRUGS—PRESCRIPTION DRUGS

Sections

69.41.030	Sale, delivery, or possession of legend drug without prescription or order prohibited—Exceptions.
69.41.120	Prescriptions to contain instruction as to whether or not a therapeutically equivalent generic drug may be substituted—Out-of-state prescriptions—Form—Contents—Procedure.

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 or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a commissioned medical or dental officer in the United States armed forces or public health service in the discharge of his or her official duties, a duly licensed physician or dentist employed by the veterans administration in the discharge of his or her official duties, a registered nurse under chapter 18.88 RCW when authorized by the board of nursing, an osteopathic physician's assistant under chapter 18.57A RCW when authorized by the committee of osteopathic examiners, a physician assistant under chapter 18.71A RCW when

authorized by the board of medical examiners, a physician licensed to practice medicine and surgery or a physician licensed to practice osteopathy and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, or a veterinarian licensed to practice veterinary medicine, in any province of Canada which shares a common border with the state of Washington or in any state of the United States: 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 or her 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: PROVIDED FURTHER, That nothing in this chapter or chapter 18.64 RCW shall prevent a family planning clinic that is under contract with the department of social and health services from selling, delivering, possessing, and dispensing commercially prepackaged oral contraceptives prescribed by authorized, licensed health care practitioners. [1991 c 30 § 1; 1990 c 219 § 2; 1987 c 144 § 1; 1981 c 120 § 1; 1979 ex.s. c 139 § 2; 1977 c 69 § 1; 1973 1st ex.s. c 186 § 3.]

Finding—1990 c 219: "The legislature finds that Washington citizens in the border areas of this state are prohibited from having prescriptions from out-of-state dentists and veterinarians filled at their in-state pharmacies, and that it is in the public interest to remove this barrier for the state's citizens." [1990 c 219 § 1.]

69.41.120 Prescriptions to contain instruction as to whether or not a therapeutically equivalent generic drug may be substituted—Out-of-state prescriptions—Form—Contents—Procedure. Every drug prescription shall contain an instruction on whether or not a therapeutically equivalent generic drug may be substituted in its place, unless substitution is permitted under a prior-consent authorization.

If a written prescription is involved, the form shall have two signature lines at opposite ends on the bottom of the form. Under the line at the right side shall be clearly printed the words "DISPENSE AS WRITTEN". Under the line at the left side shall be clearly printed the words "SUBSTITUTION PERMITTED". The practitioner shall communicate the instructions to the pharmacist by signing the appropriate line. No prescription shall be valid without the signature of the practitioner on one of these lines. In the case of a prescription issued by a practitioner in another state that uses a one-line prescription form or variation thereof, the pharmacist may substitute a therapeutically equivalent generic drug unless otherwise instructed by the practitioner through the use of the words "dispense as written", words of similar meaning, or some other indication.

If an oral prescription is involved, the practitioner or the practitioner's agent shall instruct the pharmacist as to whether or not a therapeutically equivalent generic drug may be substituted in its place. The pharmacist shall note the instructions on the file copy of the prescription.

The pharmacist shall note the manufacturer of the drug dispensed on the file copy of a written or oral prescription. [1990 c 218 § 1; 1979 c 110 § 2; 1977 ex.s. c 352 § 3.]

Chapter 69.45 DRUG SAMPLES

Sections

69.45.070 Registration fees—Penalty.

69.45.070 Registration fees—Penalty. The department may charge reasonable fees for registration. The registration fee shall not exceed the fee charged by the department for a pharmacy location license. If the registration fee is not paid on or before the date due, a renewal or new registration may be issued only upon payment of the registration renewal fee and a penalty fee equal to the registration renewal fee. [1991 c 229 § 8; 1989 1st ex.s. c 9 § 447; 1987 c 411 § 7.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Chapter 69.50 UNIFORM CONTROLLED SUBSTANCES ACT

Sections

69.50.101 Definitions.

69.50.301 Rules.

69.50.435 Violations committed in or on certain public places or facilities—Additional penalty—Defenses—Construction—Definitions.

69.50.505 Seizure and forfeiture.

69.50.511 Clean-up of hazardous substances at illegal drug manufacturing facility—Rules.

69.50.520 Drug enforcement and education account.

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) "Drug enforcement administration" means the federal drug enforcement administration in the 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) "Department" means the department of health.

(h) "Dispense" means the interpretation of a prescription or order for a controlled substance and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(i) "Dispenser" means a practitioner who dispenses.

(j) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(k) "Distributor" means a person who distributes.

(l) "Receipt" means to receive a controlled substance either with or without consideration.

(m) "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.

(n) "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.

(o) "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 or her own use or the preparation, compounding, packaging, or labeling of a controlled substance:

(1) by a practitioner as an incident to administering or dispensing of a controlled substance in the course of his or her professional practice, or

(2) by a practitioner, or by an authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(p) "Marijuana" or "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.

(q) "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.

(r) "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.

(s) "Opium poppy" means the plant of the genus *Papaver* L., except its seeds, capable of producing an opiate.

(t) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(u) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(v) "Practitioner" means:

(1) A physician under chapter 18.71 RCW, a physician assistant under chapter 18.71A RCW, an osteopathic physician or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a chiropractor 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.

(3) A physician licensed to practice medicine and surgery, a physician licensed to practice osteopathy and surgery, a dentist licensed to practice dentistry, a podiatrist licensed to practice podiatry, or a veterinarian licensed to practice veterinary medicine in any state of the United States.

(w) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(x) "Secretary" means the secretary of health or the secretary's designee.

(y) "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.

(z) "Ultimate user" means a person who lawfully possesses a controlled substance for his or her own use or for the use of a member of his or her household or for administering to an animal owned by him or her or by a member of his or her household.

(aa) "Board" means the state board of pharmacy. [1990 c 248 § 1; 1990 c 219 § 3; 1990 c 196 § 8; 1989 1st ex.s. c 9 § 429; 1987 c 144 § 2; 1986 c 124 § 1; 1984 c 153 § 18; 1980 c 71 § 2; 1973 2nd ex.s. c 38 § 1; 1971 ex.s. c 308 § 69.50.101.]

Reviser's note: This section was amended by 1990 c 196 § 8, 1990 c 219 § 3, and by 1990 c 248 § 1, each without reference to the other. All amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—1990 c 219: See note following RCW 69.41.030.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

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.]

69.50.301 Rules. The state board of pharmacy may promulgate rules and the secretary may set fees in accordance with RCW 43.70.250 relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this state. [1991 c 229 § 9; 1989 1st ex.s. c 9 § 431; 1971 ex.s. c 308 § 69.50.301.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.435 Violations committed in or on certain public places or facilities—Additional penalty—Defenses—Construction—Definitions. (a) Any person who violates RCW 69.50.401(a) by manufacturing, selling, delivering, or possessing with the intent to manufacture, sell, or deliver a controlled substance listed under that subsection or who violates RCW 69.50.410 by selling for profit any controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204,

except leaves and flowering tops of marihuana to a person in a school or on a school bus or within one thousand feet of a school bus route stop designated by the school district or within one thousand feet of the perimeter of the school grounds, in a public park or on a public transit vehicle, or in a public transit stop shelter may be punished by a fine of up to twice the fine otherwise authorized by this chapter, but not including twice the fine authorized by RCW 69.50.406, or by imprisonment of up to twice the imprisonment otherwise authorized by this chapter, but not including twice the imprisonment authorized by RCW 69.50.406, or by both such fine and imprisonment. The provisions of this section shall not operate to more than double the fine or imprisonment otherwise authorized by this chapter for an offense.

(b) It is not a defense to a prosecution for a violation of this section that the person was unaware that the prohibited conduct took place while in a school or school bus or within one thousand feet of the school or school bus route stop, in a public park, on a public transit vehicle, or in a public transit stop shelter.

(c) It is not a defense to a prosecution for a violation of this section or any other prosecution under this chapter that persons under the age of eighteen were not present in the school, the school bus, the public park, or the public transit vehicle, or at the school bus route stop or the public transit vehicle stop shelter at the time of the offense or that school was not in session.

(d) It is an affirmative defense to a prosecution for a violation of this section that the prohibited conduct took place entirely within a private residence, that no person under eighteen years of age or younger was present in such private residence at any time during the commission of the offense, and that the prohibited conduct did not involve delivering, manufacturing, selling, or possessing with the intent to manufacture, sell, or deliver any controlled substance in RCW 69.50.401(a) for profit. The affirmative defense established in this section shall be proved by the defendant by a preponderance of the evidence. This section shall not be construed to establish an affirmative defense with respect to a prosecution for an offense defined in any other section of this chapter.

(e) In a prosecution under this section, a map produced or reproduced by any municipal, school district, county, or transit authority engineer for the purpose of depicting the location and boundaries of the area on or within one thousand feet of any property used for a school, school bus route stop, public park, or public transit vehicle stop shelter, or a true copy of such a map, shall under proper authentication, be admissible and shall constitute prima facie evidence of the location and boundaries of those areas if the governing body of the municipality, school district, county, or transit authority has adopted a resolution or ordinance approving the map as the official location and record of the location and boundaries of the area on or within one thousand feet of the school, school bus route stop, public park, or public transit vehicle stop shelter. Any map approved under this section or a true copy of the map shall be filed with the clerk of the municipality or county, and shall be

maintained as an official record of the municipality or county. This section shall not be construed as precluding the prosecution from introducing or relying upon any other evidence or testimony to establish any element of the offense. This section shall not be construed as precluding the use or admissibility of any map or diagram other than the one which has been approved by the governing body of a municipality, school district, county, or transit authority if the map or diagram is otherwise admissible under court rule.

(f) As used in this section the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "School" has the meaning under RCW 28A.150.010 or 28A.150.020. The term "school" also includes a private school approved under RCW 28A.195.010;

(2) "School bus" means a school bus as defined by the superintendent of public instruction by rule which is owned and operated by any school district and all school buses which are privately owned and operated under contract or otherwise with any school district in the state for the transportation of students. The term does not include buses operated by common carriers in the urban transportation of students such as transportation of students through a municipal transportation system;

(3) "School bus route stop" means a school bus stop as designated on maps submitted by school districts to the office of the superintendent of public instruction;

(4) "Public park" means land, including any facilities or improvements on the land, that is operated as a park by the state or a local government;

(5) "Public transit vehicle" means any motor vehicle, street car, train, trolley vehicle, or any other device, vessel, or vehicle which is owned or operated by a transit authority and which is used for the purpose of carrying passengers on a regular schedule;

(6) "Transit authority" means a city, county, or state transportation system, transportation authority, public transportation benefit area, public transit authority, or metropolitan municipal corporation within the state that operates public transit vehicles;

(7) "Stop shelter" means a passenger shelter designated by a transit authority. [1991 c 32 § 4. Prior: 1990 c 244 § 1; 1990 c 33 § 588; 1989 c 271 § 112.]

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

~~Severability—1989 c 271: See note following RCW 9.94A.310.~~

69.50.505 Seizure and forfeiture. (a) The following are subject to seizure and forfeiture and no property right exists in them:

(1) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals, as defined in RCW 64.44.010, used or intended to be used in the manufacture of controlled substances;

(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 or chapter 69.41 or 69.52 RCW;

(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, in any manner to facilitate the sale, delivery, or receipt of property described in paragraphs (1) or (2), except that:

(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 or chapter 69.41 or 69.52 RCW;

(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 the owner's knowledge or consent;

(iii) No conveyance is subject to forfeiture under this section if used in the receipt of only an amount of marijuana for which possession constitutes a misdemeanor under RCW 69.50.401(e);

(iv) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(v) When the owner of a conveyance has been arrested under this chapter or chapter 69.41 or 69.52 RCW the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;

(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 or chapter 69.41 or 69.52 RCW;

(6) All drug paraphernalia;

(7) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter or chapter 69.41 or 69.52 RCW: PROVIDED, That a forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission: PROVIDED FURTHER, That no personal property may be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission which that owner establishes was committed or omitted without the owner's knowledge or consent; and

(8) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for the manufacturing, compounding, processing, delivery, importing, or exporting of any controlled substance, or which have been acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, if such activity is not less than a class C felony and a substantial nexus exists between the commercial production or sale of the controlled substance and the real property: **PROVIDED, That:**

(i) No property may be forfeited pursuant to this subsection, to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent;

(ii) The bona fide gift of a controlled substance, legend drug, or imitation controlled substance shall not result in the forfeiture of real property;

(iii) The possession of marijuana shall not result in the forfeiture of real property unless the marijuana is possessed for commercial purposes, the amount possessed is five or more plants or one pound or more of marijuana, and a substantial nexus exists between the possession of marijuana and the real property. In such a case, the intent of the offender shall be determined by the preponderance of the evidence, including the offender's prior criminal history, the amount of marijuana possessed by the offender, the sophistication of the activity or equipment used by the offender, and other evidence which demonstrates the offender's intent to engage in commercial activity;

(iv) The unlawful sale of marijuana or a legend drug shall not result in the forfeiture of real property unless the sale was forty grams or more in the case of marijuana or one hundred dollars or more in the case of a legend drug, and a substantial nexus exists between the unlawful sale and the real property; and

(v) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, at the time the security interest was created, neither had knowledge of nor consented to the act or omission.

(b) Real or personal 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 of real property shall include the filing of a *lis pendens* by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later: **PROVIDED, That** real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property 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 for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(d) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (a)(4), (a)(7), or (a)(8) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the item seized shall be deemed forfeited. The community property interest in real property of a person whose spouse committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(e) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction if

the aggregate value of the article or articles involved is more than five hundred dollars. The court to which the matter is to be removed shall be the district court when such aggregate value is ten thousand dollars or less of personal property. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorney's fees. In cases involving personal property, the burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the property. In cases involving real property, the burden of producing evidence shall be upon the law enforcement agency. The burden of proof that the seized real property is subject to forfeiture shall be upon the law enforcement agency. The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) of this section.

(f) 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) (i) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds and all moneys forfeited under this title shall be used for payment of all proper expenses of the investigation leading to the seizure, including any money delivered to the subject of the investigation by the law enforcement agency, and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, actual costs of the prosecuting or city attorney, and court costs. Money remaining after the payment of all expenses shall be distributed as follows:

(A) Twenty-five percent of the money derived from the forfeiture of real property and seventy-five percent of the money derived from the forfeiture of personal property shall be deposited in the general fund of the state, county, and/or city of the seizing law enforcement agency and shall be used exclusively for the expansion or improvement of law enforcement services. These services may include the creation of reward funds for the purpose of rewarding informants who supply information leading to the arrest, prosecution and conviction of persons who violate laws relating to controlled substances. Such moneys shall not supplant preexisting funding sources;

(B) Twenty-five percent of money derived from the forfeiture of real property and twenty-five percent of money derived from the forfeiture of personal property shall be remitted to the state treasurer for deposit in the public safety and education account established in RCW 43.08.250;

(C) Until July 1, 1995, fifty percent of money derived from the forfeiture of real property shall be remitted to the state treasurer for deposit in the drug enforcement and education account under RCW 69.50.520, on and after July 1, 1995, the fifty percent of the money shall be remitted in the same manner as the twenty-five percent of the money remitted under (2)(i)(A) of this subsection; and

(D) If an investigation involves a seizure of moneys and proceeds having an aggregate value of less than five thousand dollars, the moneys and proceeds may be deposited in total in the general fund of the governmental unit of the seizing law enforcement agency and shall be appropriated exclusively for the expansion of narcotics enforcement services. Such moneys shall not supplant preexisting funding sources.

(ii) Money deposited according to this section must be deposited within ninety days of the date of final disposition of either the administrative seizure or the judicial seizure;

(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 drug enforcement administration for disposition.

(g) 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.

(h) 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.

(i) 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.

(j) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. Orders for the forfeiture of real property shall be entered by the superior court, subject to court rules. Such an order shall be filed by the seizing agency in the county auditor's records in the county in which the real property is located. [1990 c 248 § 2; 1990 c 213 § 12; 1989 c 271 § 212; 1988 c 282 § 2; 1986 c 124 § 9; 1984 c 258 § 333; 1983 c 2 § 15. Prior: 1982 c 189 § 6; 1982 c 171 § 1; prior: 1981 c 67 § 32; 1981 c 48 § 3; 1977 ex.s. c 77 § 1; 1971 ex.s. c 308 § 69.50.505.]

Reviser's note: This section was amended by 1990 c 213 § 12 and by 1990 c 248 § 2, each without reference to the other. Both amendments

are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1990 c 213 § 2, 12: See note following RCW 64.44.010.

Severability—1990 c 213: See RCW 64.44.901.

Findings—1989 c 271: "The legislature finds that: Drug offenses and crimes resulting from illegal drug use are destructive to society; the nature of drug trafficking results in many property crimes and crimes of violence; state and local governmental agencies incur immense expenses in the investigation, prosecution, adjudication, incarceration, and treatment of drug-related offenders and the compensation of their victims; drug-related offenses are difficult to eradicate because of the profits derived from the criminal activities, which can be invested in legitimate assets and later used for further criminal activities; and the forfeiture of real assets where a substantial nexus exists between the commercial production or sale of the substances and the real property will provide a significant deterrent to crime by removing the profit incentive of drug trafficking, and will provide a revenue source that will partially defray the large costs incurred by government as a result of these crimes. The legislature recognizes that seizure of real property is a very powerful tool and should not be applied in cases in which a manifest injustice would occur as a result of forfeiture of an innocent spouse's community property interest." [1989 c 271 § 211.]

Severability—1989 c 271: See note following RCW 9.94A.310.

Severability—1988 c 282: "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." [1988 c 282 § 3.]

Court Improvement Act of 1984—**Effective dates**—**Severability**—**Short title**—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

Severability—1983 c 2: See note following RCW 18.71.030.

Effective date—1982 c 189: See note following RCW 34.12.020.

Severability—**Effective date**—1982 c 171: See RCW 69.52.900 and 69.52.901.

Severability—1981 c 48: See note following RCW 69.50.102.

69.50.511 Clean-up of hazardous substances at illegal drug manufacturing facility—**Rules.** Law enforcement agencies who during the official investigation or enforcement of any illegal drug manufacturing facility come in contact with or are aware of any substances suspected of being hazardous as defined in RCW 70.105D.020(5), shall notify the department of ecology for the purpose of securing a contractor to identify, clean-up, store, and dispose of suspected hazardous substances, except for those random and representative samples obtained for evidentiary purposes. Whenever possible, a destruct order covering hazardous substances which may be described in general terms shall be obtained concurrently with a search warrant. Materials that have been photographed, fingerprinted, and subsampled by police shall be destroyed as soon as practical. The department of ecology shall make every effort to recover costs from the parties responsible for the suspected hazardous substance. All recoveries shall be deposited in the account or fund from which contractor payments are made.

The department of ecology may adopt rules to carry out its responsibilities under this section. The department of ecology shall consult with law enforcement agencies prior to adopting any rule or policy relating to this section. [1990 c 213 § 13; 1989 c 271 § 228.]

Severability—1990 c 213: See RCW 64.44.901.

Severability—1989 c 271: See note following RCW 9.94A.310.

69.50.520 Drug enforcement and education account. The drug enforcement and education account is created in the state treasury. All designated receipts from RCW 66.24.210(4), 66.24.290(3), 69.50.505(f)(2)(i)(C), 82.08.150(5), 82.24.020(2), 82.64.020, and section 420, chapter 271, Laws of 1989 shall be deposited into the account. Expenditures from the account may be used only for funding services and programs under *this act. [1989 c 271 § 401.]

*Reviser's note: For codification of "this act" [1989 c 271], see Codification Tables, Volume 0.

Appropriation—**Standards**—1990 c 275 § 4; 1989 c 271 § 401: "The sum of one million eight hundred thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the office of the administrator for the courts for the treatment alternatives to street crime program. These funds shall be used for providing services in domestic cases to children and to parents or others having custody of children under chapter 26.09, 26.10, 26.26, 26.44, or 26.50 RCW. These funds shall not be available for expenditure until January 1, 1990. The office of the administrator for the courts shall establish standards for the courts to recover the expenses of the program specified in this section from the participants, based upon the individual participant's ability to pay. All fees collected shall be remitted to the state treasurer for deposit in the drug enforcement and education account under RCW 69.50.520." [1990 c 275 § 4; 1989 c 271 § 420.]

Captions not law—1989 c 271: "Part, subpart, and section headings and the index as used in this act do not constitute any part of the law." [1989 c 271 § 605.]

Severability—1989 c 271: See note following RCW 9.94A.310.

Chapter 69.60

OVER-THE-COUNTER MEDICATIONS

Sections

69.60.800 Labeling of nonprescription drugs—Report to the legislature—Expiration of section.

69.60.800 Labeling of nonprescription drugs—**Report to the legislature**—**Expiration of section.** (1) Manufacturers of nonprescription drugs that are sold in this state shall evaluate and may modify the labeling of nonprescription drugs to maximize the readability and clarity of label information, in both the cognitive and visual sense. The nonprescription drug manufacturers association is requested to report on a quarterly basis to, and seek advice [advice] from, the board of pharmacy, which may appoint an advisory committee to assist the board, regarding the progress made by the nonprescription drug industry with respect to the readability and clarity of labeling information.

(2) The board of pharmacy shall report to the legislature by December 1, 1993, regarding the progress made by the nonprescription drug industry with respect to the readability and clarity of labeling information.

(3) This section shall expire on March 31, 1994. [1991 c 68 § 2.]

Finding—1991 c 68: "The legislature finds that printed material on labels and notices packaged with nonprescription drugs may be difficult to read. This difficulty presents a potential danger to the health and safety of customers, therefore, every effort should be made to print these materials in a manner that makes them more comprehensible." [1991 c 68 § 1.]

Title 70

PUBLIC HEALTH AND SAFETY

Chapters

- 70.02 Medical records—Health care information access and disclosure.
- 70.05 Local health departments, boards, officers—Regulations.
- 70.08 Combined city–county health departments.
- 70.12 Public health funds.
- 70.22 Mosquito control.
- 70.24 Control and treatment of sexually transmitted diseases.
- 70.30 Tuberculosis hospitals and facilities.
- 70.33 State administered tuberculosis hospital facilities.
- 70.38 Health planning and development.
- 70.39 Hospital health care services—Hospital commission.
- 70.40 Hospital and medical facilities survey and construction act.
- 70.41 Hospital licensing and regulation.
- 70.44 Public hospital districts.
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- 70.95C Waste reduction.
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- 70.116 Public water system coordination act of 1977.
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- 70.146 Water pollution control facilities financing.
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- 70.164 Low–income residential weatherization program.
- 70.168 State–wide trauma care system.
- 70.170 Health data and charity care.
- 70.175 Rural health system project.
- 70.180 Rural health care.
- 70.185 Rural areas—Health care professional recruitment and retention.

Chapter 70.02

MEDICAL RECORDS—HEALTH CARE INFORMATION ACCESS AND DISCLOSURE

Sections

- 70.02.005 Findings.
- 70.02.010 Definitions.
- 70.02.020 Disclosure by health care provider.
- 70.02.030 Patient authorization of disclosure.
- 70.02.040 Patient's revocation of authorization for disclosure.
- 70.02.050 Disclosure without patient's authorization.
- 70.02.060 Discovery request or compulsory process.
- 70.02.070 Certification of record.
- 70.02.080 Patient's examination and copying—Requirements.
- 70.02.090 Patient's request—Denial of examination and copying.
- 70.02.100 Correction or amendment of record.
- 70.02.110 Correction or amendment or statement of disagreement—Procedure.
- 70.02.120 Notice of information practices—Display conspicuously.
- 70.02.130 Consent by others; health care representatives.
- 70.02.140 Representative of deceased patient.
- 70.02.150 Security safeguards.
- 70.02.160 Retention of record.
- 70.02.170 Civil remedies.
- 70.02.900 Conflicting laws.
- 70.02.901 Application and construction—1991 c 335.
- 70.02.902 Short title.
- 70.02.903 Severability—1991 c 335.
- 70.02.904 Captions not law—1991, c 335.

70.02.005 Findings. The legislature finds that:

- (1) Health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy, health care, or other interests.
- (2) Patients need access to their own health care information as a matter of fairness to enable them to make informed decisions about their health care and correct inaccurate or incomplete information about themselves.

(3) In order to retain the full trust and confidence of patients, health care providers have an interest in assuring that health care information is not improperly disclosed and in having clear and certain rules for the disclosure of health care information.

(4) Persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of the patient's health care information survives even when the information is held by persons other than health care providers.

(5) The movement of patients and their health care information across state lines, access to and exchange of health care information from automated data banks, and the emergence of multistate health care providers creates a compelling need for uniform law, rules, and procedures governing the use and disclosure of health care information. [1991 c 335 § 101.]

70.02.010 Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by a person not employed by or affiliated with the provider to determine compliance with:

(a) Statutory, regulatory, fiscal, medical, or scientific standards;

(b) A private or public program of payments to a health care provider; or

(c) Requirements for licensing, accreditation, or certification.

(2) "Directory information" means information disclosing the presence and the general health condition of a particular patient who is a patient in a health care facility or who is currently receiving emergency health care in a health care facility.

(3) "General health condition" means the patient's health status described in terms of "critical," "poor," "fair," "good," "excellent," or terms denoting similar conditions.

(4) "Health care" means any care, service, or procedure provided by a health care provider:

(a) To diagnose, treat, or maintain a patient's physical or mental condition; or

(b) That affects the structure or any function of the human body.

(5) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(6) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care. The term includes any record of disclosures of health care information.

(7) "Health care provider" means a person who is licensed, certified, registered, or otherwise authorized by the law of this state to provide health care in the ordinary course of business or practice of a profession.

(8) "Institutional review board" means any board, committee, or other group formally designated by an institution, or authorized under federal or state law, to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(9) "Maintain," as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

(10) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(12) "Reasonable fee" means the charges for duplicating or searching the record specified in RCW 36.18-.020 (8) or (16), respectively. However, where editing of records by a health care provider is required by statute and is done by the provider personally, the fee may be the usual and customary charge for a basic office visit. [1991 c 335 § 102.]

70.02.020 Disclosure by health care provider. Except as authorized in RCW 70.02.050, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent and employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

Health care providers or facilities shall chart all disclosures, except to third-party health care payors, of health care information, such chartings to become part of the health care information. [1991 c 335 § 201.]

70.02.030 Patient authorization of disclosure. (1) A patient may authorize a health care provider to disclose the patient's health care information. A health care provider shall honor an authorization and, if requested, provide a copy of the recorded health care information unless the health care provider denies the patient access to health care information under RCW 70.02.090.

(2) A health care provider may charge a reasonable fee, not to exceed the health care provider's actual cost for providing the health care information, and is not required to honor an authorization until the fee is paid.

(3) To be valid, a disclosure authorization to a health care provider shall:

(a) Be in writing, dated, and signed by the patient;

(b) Identify the nature of the information to be disclosed;

(c) Identify the name, address, and institutional affiliation of the person to whom the information is to be disclosed;

(d) Identify the provider who is to make the disclosure; and

(e) Identify the patient.

(4) Except as provided by this chapter, the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the rules of evidence, or common law.

(5) A health care provider shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made. This requirement shall not apply to disclosures to third-party health care payors.

(6) Except for authorizations to provide information to third-party health care payors, an authorization may not permit the release of health care information relating to future health care that the patient receives more than ninety days after the authorization was signed. Patients shall be advised of the period of validity of their authorization on the disclosure authorization form.

(7) Except for authorizations to provide information to third-party health payors, an authorization in effect on July 28, 1991, remains valid for six months after July 28, 1991, unless an earlier date is specified or it is revoked under RCW 70.02.040. Health care information disclosed under such an authorization is otherwise subject to this chapter. An authorization written after July 28, 1991, becomes invalid after the expiration date contained in the authorization, which may not exceed ninety days. If the authorization does not contain an expiration date, it expires ninety days after it is signed. [1991 c 335 § 202.]

70.02.040 Patient's revocation of authorization for disclosure. A patient may revoke in writing a disclosure authorization to a health care provider at any time unless disclosure is required to effectuate payments for health care that has been provided or other substantial action has been taken in reliance on the authorization. A patient may not maintain an action against the health care provider for disclosures made in good-faith reliance on an authorization if the health care provider had no actual notice of the revocation of the authorization. [1991 c 335 § 203.]

70.02.050 Disclosure without patient's authorization.

(1) A health care provider may disclose health care information about a patient without the patient's authorization to the extent a recipient needs to know the information, if the disclosure is:

(a) To a person who the provider reasonably believes is providing health care to the patient;

(b) To any other person who requires health care information for health care education, or to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services to the health care provider; or for assisting the health care provider in the delivery of health care and the health care provider reasonably believes that the person:

(i) Will not use or disclose the health care information for any other purpose; and

(ii) Will take appropriate steps to protect the health care information;

(c) To any other health care provider reasonably believed to have previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider in writing not to make the disclosure;

(d) To any person if the health care provider reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual, however there is no obligation under this chapter on the part of the provider to so disclose;

(e) Oral, and made to immediate family members of the patient, or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with good medical or other professional practice, unless the patient has instructed the health care provider in writing not to make the disclosure;

(f) To a health care provider who is the successor in interest to the health care provider maintaining the health care information;

(g) For use in a research project that an institutional review board has determined:

(i) Is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(ii) Is impracticable without the use or disclosure of the health care information in individually identifiable form;

(iii) Contains reasonable safeguards to protect the information from redisclosure;

(iv) Contains reasonable safeguards to protect against identifying, directly or indirectly, any patient in any report of the research project; and

(v) Contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

(h) To a person who obtains information for purposes of an audit, if that person agrees in writing to:

(i) Remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(ii) Not to disclose the information further, except to accomplish the audit or report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient, or other unlawful conduct by the health care provider;

(i) To an official of a penal or other custodial institution in which the patient is detained;

(j) To provide directory information, unless the patient has instructed the health care provider not to make the disclosure.

(2) A health care provider shall disclose health care information about a patient without the patient's authorization if the disclosure is:

(a) To federal, state, or local public health authorities, to the extent the health care provider is required by law

to report health care information; when needed to determine compliance with state or federal licensure, certification or registration rules or laws; or when needed to protect the public health;

(b) To federal, state, or local law enforcement authorities to the extent the health care provider is required by law;

(c) Pursuant to compulsory process in accordance with RCW 70.02.060.

(3) All state or local agencies obtaining patient health care information pursuant to this section shall adopt rules establishing their record acquisition, retention, and security policies that are consistent with this chapter. [1991 c 335 § 204.]

70.02.060 Discovery request or compulsory process.

(1) Before service of a discovery request or compulsory process on a health care provider for health care information, an attorney shall provide advance notice to the health care provider and the patient or the patient's attorney involved through service of process or first class mail, indicating the health care provider from whom the information is sought, what health care information is sought, and the date by which a protective order must be obtained to prevent the health care provider from complying. Such date shall give the patient and the health care provider adequate time to seek a protective order, but in no event be less than fourteen days since the date of service or delivery to the patient and the health care provider of the foregoing. Thereafter the request for discovery or compulsory process shall be served on the health care provider.

(2) Without the written consent of the patient, the health care provider may not disclose the health care information sought under subsection (1) of this section if the requestor has not complied with the requirements of subsection (1) of this section. In the absence of a protective order issued by a court of competent jurisdiction forbidding compliance, the health care provider shall disclose the information in accordance with this chapter. In the case of compliance, the request for discovery or compulsory process shall be made a part of the patient record.

(3) Production of health care information under this section, in and of itself, does not constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure. [1991 c 335 § 205.]

70.02.070 Certification of record. Upon the request of the person requesting the record, the health care provider or facility shall certify the record furnished and may charge for such certification in accordance with RCW 36.18.020(9). No record need be certified until the fee is paid. The certification shall be affixed to the record and disclose:

(1) The identity of the patient;

(2) The kind of health care information involved;

(3) The identity of the person to whom the information is being furnished;

(4) The identity of the health care provider or facility furnishing the information;

(5) The number of pages of the health care information;

(6) The date on which the health care information is furnished; and

(7) That the certification is to fulfill and meet the requirements of this section. [1991 c 335 § 206.]

70.02.080 Patient's examination and copying—Requirements. (1) Upon receipt of a written request from a patient to examine or copy all or part of the patient's recorded health care information, a health care provider, as promptly as required under the circumstances, but no later than fifteen working days after receiving the request shall:

(a) Make the information available for examination during regular business hours and provide a copy, if requested, to the patient;

(b) Inform the patient if the information does not exist or cannot be found;

(c) If the health care provider does not maintain a record of the information, inform the patient and provide the name and address, if known, of the health care provider who maintains the record;

(d) If the information is in use or unusual circumstances have delayed handling the request, inform the patient and specify in writing the reasons for the delay and the earliest date, not later than twenty-one working days after receiving the request, when the information will be available for examination or copying or when the request will be otherwise disposed of; or

(e) Deny the request, in whole or in part, under RCW 70.02.090 and inform the patient.

(2) Upon request, the health care provider shall provide an explanation of any code or abbreviation used in the health care information. If a record of the particular health care information requested is not maintained by the health care provider in the requested form, the health care provider is not required to create a new record or reformulate an existing record to make the health care information available in the requested form. The health care provider may charge a reasonable fee, not to exceed the health care provider's actual cost, for providing the health care information and is not required to permit examination or copying until the fee is paid. [1991 c 335 § 301.]

70.02.090 Patient's request—Denial of examination and copying. (1) Subject to any conflicting requirement in the public disclosure act, chapter 42.17 RCW, a health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:

(a) Knowledge of the health care information would be injurious to the health of the patient;

(b) Knowledge of the health care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;

(c) Knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;

(d) The health care information was compiled and is used solely for litigation, quality assurance, peer review, or administrative purposes; or

(e) Access to the health care information is otherwise prohibited by law.

(2) If a health care provider denies a request for examination and copying under this section, the provider, to the extent possible, shall segregate health care information for which access has been denied under subsection (1) of this section from information for which access cannot be denied and permit the patient to examine or copy the disclosable information.

(3) If a health care provider denies a patient's request for examination and copying, in whole or in part, under subsection (1) (a) or (c) of this section, the provider shall permit examination and copying of the record by another health care provider, selected by the patient, who is licensed, certified, registered, or otherwise authorized under the laws of this state to treat the patient for the same condition as the health care provider denying the request. The health care provider denying the request shall inform the patient of the patient's right to select another health care provider under this subsection. The patient shall be responsible for arranging for compensation of the other health care provider so selected. [1991 c 335 § 302.]

70.02.100 Correction or amendment of record. (1) For purposes of accuracy or completeness, a patient may request in writing that a health care provider correct or amend its record of the patient's health care information to which a patient has access under RCW 70.02.080.

(2) As promptly as required under the circumstances, but no later than ten days after receiving a request from a patient to correct or amend its record of the patient's health care information, the health care provider shall:

(a) Make the requested correction or amendment and inform the patient of the action;

(b) Inform the patient if the record no longer exists or cannot be found;

(c) If the health care provider does not maintain the record, inform the patient and provide the patient with the name and address, if known, of the person who maintains the record;

(d) If the record is in use or unusual circumstances have delayed the handling of the correction or amendment request, inform the patient and specify in writing, the earliest date, not later than twenty-one days after receiving the request, when the correction or amendment will be made or when the request will otherwise be disposed of; or

(e) Inform the patient in writing of the provider's refusal to correct or amend the record as requested and the patient's right to add a statement of disagreement. [1991 c 335 § 401.]

70.02.110 Correction or amendment or statement of disagreement—Procedure. (1) In making a correction or amendment, the health care provider shall:

(a) Add the amending information as a part of the health record; and

(b) Mark the challenged entries as corrected or amended entries and indicate the place in the record where the corrected or amended information is located, in a manner practicable under the circumstances.

(2) If the health care provider maintaining the record of the patient's health care information refuses to make the patient's proposed correction or amendment, the provider shall:

(a) Permit the patient to file as a part of the record of the patient's health care information a concise statement of the correction or amendment requested and the reasons therefor; and

(b) Mark the challenged entry to indicate that the patient claims the entry is inaccurate or incomplete and indicate the place in the record where the statement of disagreement is located, in a manner practicable under the circumstances. [1991 c 335 § 402.]

70.02.120 Notice of information practices—Display conspicuously. (1) A health care provider who provides health care at a health care facility that the provider operates and who maintains a record of a patient's health care information shall create a "notice of information practices" that contains substantially the following:

NOTICE

"We keep a record of the health care services we provide you. You may ask us to see and copy that record. You may also ask us to correct that record. We will not disclose your record to others unless you direct us to do so or unless the law authorizes or compels us to do so. You may see your record or get more information about it at -----"

(2) The health care provider shall place a copy of the notice of information practices in a conspicuous place in the health care facility, on a consent form or with a billing or other notice provided to the patient. [1991 c 335 § 501.]

70.02.130 Consent by others; health care representatives. (1) A person authorized to consent to health care for another may exercise the rights of that person under this chapter to the extent necessary to effectuate the terms or purposes of the grant of authority. If the patient is a minor and is authorized to consent to health care without parental consent under federal and state law, only the minor may exercise the rights of a patient under this chapter as to information pertaining to health care to which the minor lawfully consented. In cases where parental consent is required, a health care provider may rely, without incurring any civil or criminal liability for such reliance, on the representation of a parent that he or she is authorized to consent to health care for the minor patient regardless of whether:

(a) The parents are married, unmarried, or separated at the time of the representation;

(b) The consenting parent is, or is not, a custodial parent of the minor;

(c) The giving of consent by a parent is, or is not, full performance of any agreement between the parents, or of any order or decree in any action entered pursuant to chapter 26.09 RCW.

(2) A person authorized to act for a patient shall act in good faith to represent the best interests of the patient. [1991 c 335 § 601.]

70.02.140 Representative of deceased patient. A personal representative of a deceased patient may exercise all of the deceased patient's rights under this chapter. If there is no personal representative, or upon discharge of the personal representative, a deceased patient's rights under this chapter may be exercised by persons who would have been authorized to make health care decisions for the deceased patient when the patient was living under RCW 7.70.065. [1991 c 335 § 602.]

70.02.150 Security safeguards. A health care provider shall effect reasonable safeguards for the security of all health care information it maintains. [1991 c 335 § 701.]

70.02.160 Retention of record. A health care provider shall maintain a record of existing health care information for at least one year following receipt of an authorization to disclose that health care information under RCW 70.02.040, and during the pendency of a request for examination and copying under RCW 70.02.080 or a request for correction or amendment under RCW 70.02.100. [1991 c 335 § 702.]

70.02.170 Civil remedies. (1) A person who has complied with this chapter may maintain an action for the relief provided in this section against a health care provider or facility who has not complied with this chapter.

(2) The court may order the health care provider or other person to comply with this chapter. Such relief may include actual damages, but shall not include consequential or incidental damages. The court shall award reasonable attorneys' fees and all other expenses reasonably incurred to the prevailing party.

(3) Any action under this chapter is barred unless the action is commenced within two years after the cause of action is discovered.

(4) A violation of this chapter shall not be deemed a violation of the consumer protection act, chapter 19.86 RCW. [1991 c 335 § 801.]

70.02.900 Conflicting laws. (1) This chapter does not restrict a health care provider from complying with obligations imposed by federal or state health care payment programs or federal or state law.

(2) This chapter does not modify the terms and conditions of disclosure under Title 51 RCW and chapters 13.50, 26.09, 70.24, 70.39, 70.96A, 71.05, and 71.34

RCW and rules adopted under these provisions. [1991 c 335 § 901.]

70.02.901 Application and construction—1991 c 335. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it. [1991 c 335 § 903.]

70.02.902 Short title. This act may be cited as the uniform health care information act. [1991 c 335 § 904.]

70.02.903 Severability—1991 c 335. 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. [1991 c 335 § 905.]

70.02.904 Captions not law—1991 c 335. As used in this act, captions constitute no part of the law. [1991 c 335 § 906.]

Chapter 70.05

LOCAL HEALTH DEPARTMENTS, BOARDS, OFFICERS—REGULATIONS

Sections	
70.05.053	Provisionally qualified local health officers—Appointment—Term—Requirements.
70.05.054	Provisionally qualified local health officers—In-service public health orientation program.
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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70.05.080	Local health officer—Failure to appoint—Procedure.
70.05.090	Physicians to report diseases.
70.05.100	Determination of character of disease.
70.05.130	Expenses of state, health district, or county in enforcing health laws and rules—Payment by county or city.

70.05.053 Provisionally qualified local health officers—Appointment—Term—Requirements. A person holding a license 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 the board or official responsible for appointing the local health officer under RCW 70.05.050 as a provisionally qualified local health officer for a maximum period of three years upon the following conditions and in accordance with the following procedures:

(1) He or she shall participate in an in-service orientation to the field of public health as provided in RCW 70.05.054, and

(2) He or she shall satisfy the secretary of health pursuant to the periodic interviews prescribed by RCW 70.05.055 that he or she 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. [1991 c 3 § 305; 1983 1st ex.s. c 39 § 3; 1979 c 141 § 76; 1969 ex.s. c 114 § 3.]

70.05.054 Provisionally qualified local health officers—In-service public health orientation program. The secretary 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 secretary 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 or she shall pursue. [1991 c 3 § 306; 1979 c 141 § 77; 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 secretary of health or his or her 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 secretary shall evaluate the provisional local health officer's in-service performance and shall notify such officer by certified mail of his or her 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. [1991 c 3 § 307; 1979 c 141 § 78; 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 or the administrative officer appointed under RCW 70.05.040, if any, the public health statutes of the state and rules promulgated by the state board of health and the secretary 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 or the administrative 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 of the state board of health: PROVIDED, That such fees for services shall not exceed the actual cost of providing any such services. [1991 c 3 § 308; 1984 c 25 § 6; 1979 c 141 § 79; 1967 ex.s. c 51 § 10.]

70.05.070 Local health officer—Powers and duties. The local health officer, acting under the direction of the local board of health or under direction of the administrative officer appointed under RCW 70.05.040, if any, shall:

(1) Enforce the public health statutes of the state, rules of the state board of health and the secretary of health, and all local health rules, regulations and ordinances within his or her jurisdiction including imposition of penalties authorized under RCW 70.119A.030 and filing of actions authorized by RCW 43.70.190;

(2) Take such action as is necessary to maintain health and sanitation supervision over the territory within his or her jurisdiction;

(3) Control and prevent the spread of any dangerous, contagious or infectious diseases that may occur within his or her 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 or her jurisdiction;

(5) Prevent, control or abate nuisances which are detrimental to the public health;

(6) Attend all conferences called by the secretary of health or his or her 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 of the state board of health;

(8) Inspect, as necessary, expansion or modification of existing public water systems, and the construction of new public water systems, to assure that the expansion, modification, or construction conforms to system design and plans;

(9) Take such measures as he or she 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. [1991 c 3 § 309; 1990 c 133 § 10; 1984 c 25 § 7; 1979 c 141 § 80; 1967 ex.s. c 51 § 12.]

Findings—Severability—1990 c 133: See notes following RCW 36.94.140.

70.05.080 Local health officer—Failure to appoint—Procedure. If the local board of health or other official responsible for appointing a local health officer under RCW 70.05.050 refuses or neglects to appoint a local health officer after a vacancy exists, the secretary of health may appoint a local health officer and fix the compensation. The local health officer so appointed shall have the same duties, powers and authority as though appointed under RCW 70.05.050. Such local health officer shall serve until a qualified individual is appointed according to the procedures set forth in RCW 70.05.050. The board or official responsible for appointing the local health officer under RCW 70.05.050 shall also be authorized to appoint an acting health officer to serve whenever the health officer is absent or incapacitated and unable to fulfill his or her responsibilities under the provisions of chapter 70.05 RCW and RCW 70.46.020 through 70.46.090. [1991 c 3 § 310; 1983 1st ex.s. c 39 § 4; 1979 c 141 § 81; 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 or she 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. [1991 c 3 § 311; 1979 c 141 § 82; 1967 ex.s. c 51 § 14.]

70.05.100 Determination of 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 or she may appoint to examine such case, shall be final. [1991 c 3 § 312; 1979 c 141 § 83; 1967 ex.s. c 51 § 15.]

70.05.130 Expenses of state, health district, or county in enforcing health laws and rules—Payment by county or city. 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 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. [1991 c 3 § 313; 1979 c 141 § 84; 1967 ex.s. c 51 § 18.]

Chapter 70.08

COMBINED CITY-COUNTY HEALTH DEPARTMENTS

Sections

70.08.050 May act as health officer for other cities or towns.

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 secretary of health shall first give his or her approval thereto. [1991 c 3 § 314; 1979 c 141 § 85; 1949 c 46 § 8; Rem. Supp. 1949 § 6099–37.]

Chapter 70.12

PUBLIC HEALTH FUNDS

Sections

70.12.015 Secretary may expend funds in counties.

70.12.070 Fund subject to audit and check by state.

70.12.015 Secretary may expend funds in counties. The secretary of health is hereby authorized to apportion and expend such sums as he or she 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. [1991 c 3 § 315; 1979 c 141 § 86; 1939 c 191 § 2; RRS § 6001–1. Formerly RCW 70.12.080.]

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. [1991 c 3 § 316; 1979 c 141 § 87; 1943 c 190 § 5; Rem. Supp. 1943 § 6099–5.]

Chapter 70.22

MOSQUITO CONTROL

Sections

70.22.020 Secretary may make inspections, investigations, and determinations and provide for control.

70.22.030 Secretary to coordinate plans.

70.22.040 Secretary 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 secretary.

70.22.060 Governmental entities to cooperate with secretary.

70.22.020 Secretary may make inspections, investigations, and determinations and provide for control. The secretary of health is hereby authorized and empowered to make or cause to be made such inspections, investigations, studies and determinations as he or she 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. [1991 c 3 § 317; 1979 c 141 § 88; 1961 c 283 § 2.]

70.22.030 Secretary to coordinate plans. The secretary 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. [1991 c 3 § 318; 1979 c 141 § 89; 1961 c 283 § 3.]

70.22.040 Secretary may contract with, receive funds from entities and individuals—Authorization for governmental entities to contract, grant funds, levy taxes. The secretary 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 secretary 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 secretary is authorized, empowered and directed to appropriate, and if necessary, to levy taxes for and pay over such funds as its contract with the secretary may from time to time require. [1991 c 3 § 319; 1979 c 141 § 90; 1961 c 283 § 4.]

70.22.050 Powers and duties of secretary. To carry out the purpose of this chapter, the secretary of health may:

- (1) Abate as nuisances breeding places for mosquitoes as defined in RCW 17.28.170;
- (2) Acquire by gift, devise, bequest, lease, or purchase, real and personal property necessary or convenient for carrying out the purpose of this chapter;
- (3) Make contracts, employ engineers, health officers, sanitarians, physicians, laboratory personnel, attorneys, and other technical or professional assistants;
- (4) Publish information or literature; and
- (5) 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. [1991 c 3 § 320; 1989 c 11 § 25; 1979 c 141 § 91; 1961 c 283 § 5.]

Severability—1989 c 11: See note following RCW 9A.56.220.

70.22.060 Governmental entities to cooperate with secretary. Each state department, agency, and political subdivision shall cooperate with the secretary of health

in carrying out the purposes of this chapter. [1991 c 3 § 321; 1979 c 141 § 92; 1961 c 283 § 6.]

Chapter 70.24

CONTROL AND TREATMENT OF SEXUALLY TRANSMITTED DISEASES

(Formerly: Control and treatment of venereal diseases)

Sections	
70.24.017	Definitions.
70.24.100	Syphilis laboratory tests.
70.24.120	Sexually transmitted disease case investigators—Authority to withdraw blood.
70.24.130	Adoption of rules.
70.24.150	Immunity of certain public employees.
70.24.400	Department to establish regional AIDS service networks—Funding—Lead counties—Regional plans—University of Washington, center for AIDS education.
70.24.410	AIDS advisory committee—Duties, review of insurance problems—Termination.

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

- (1) "Acquired immunodeficiency syndrome" or "AIDS" means the clinical syndrome of HIV-related illness as defined by the board of health by rule.
- (2) "Board" means the state board of health.
- (3) "Department" means the department of health, or any successor department with jurisdiction over public health matters.
- (4) "Health care provider" means any person who is a member of a profession under RCW 18.130.040 or other person providing medical, nursing, psychological, or other health care services regulated by the department of health.
- (5) "Health care facility" means a hospital, nursing home, neuropsychiatric or mental health facility, home health agency, hospice, child care agency, adult family home, group care facility, family foster home, clinic, blood bank, blood center, sperm bank, laboratory, or other social service or health care institution regulated or operated by the department of health.
- (6) "HIV-related condition" means any medical condition resulting from infection with HIV including, but not limited to, seropositivity for HIV.
- (7) "Human immunodeficiency virus" or "HIV" means all HIV and HIV-related viruses which damage the cellular branch of the human immune or neurological systems and leave the infected person immunodeficient or neurologically impaired.
- (8) "Test for a sexually transmitted disease" means a test approved by the board by rule.
- (9) "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incompetent or, in the case of a minor, a person who has legal custody of the child.
- (10) "Local public health officer" means the officer directing the county health department or his or her designee who has been given the responsibility and authority to protect the health of the public within his or her jurisdiction.

(11) "Person" includes any natural person, partnership, association, joint venture, trust, public or private corporation, or health facility.

(12) "Release of test results" means a written authorization for disclosure of any sexually transmitted disease test result which is signed, dated, and which specifies to whom disclosure is authorized and the time period during which the release is to be effective.

(13) "Sexually transmitted disease" means a bacterial, viral, fungal, or parasitic disease, determined by the board by rule to be sexually transmitted, to be a threat to the public health and welfare, and to be a disease for which a legitimate public interest will be served by providing for regulation and treatment. The board shall designate chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), trachomitis, genital human papilloma virus infection, syphilis, acquired immunodeficiency syndrome (AIDS), and human immunodeficiency virus (HIV) infection as sexually transmitted diseases, and shall consider the recommendations and classifications of the centers for disease control and other nationally recognized medical authorities in designating other diseases as sexually transmitted.

(14) "State public health officer" means the secretary of health or an officer appointed by the secretary. [1991 c 3 § 322; 1988 c 206 § 101.]

70.24.100 Syphilis laboratory tests. A standard serological test shall be a laboratory test for syphilis approved by the secretary of health and shall be performed either by a laboratory approved by the secretary 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. [1991 c 3 § 323; 1979 c 141 § 95; 1939 c 165 § 2; RRS § 6002-2.]

70.24.120 Sexually transmitted disease case investigators—Authority to withdraw blood. Sexually transmitted disease case investigators, upon specific authorization from a physician, are hereby authorized to perform venipuncture or skin puncture on a person for the sole purpose of withdrawing blood for use in sexually transmitted disease tests.

The term "sexually transmitted disease case investigator" shall mean only those persons who:

- (1) Are employed by public health authorities; and
- (2) Have been trained by a physician in proper procedures to be employed when withdrawing blood in accordance with training requirements established by the department of health; and
- (3) Possess a statement signed by the instructing physician that the training required by subsection (2) of this section has been successfully completed.

The term "physician" means any person licensed under the provisions of chapters 18.57 or 18.71 RCW. [1991 c 3 § 324; 1988 c 206 § 913; 1977 c 59 § 1.]

70.24.130 Adoption of rules. The board shall adopt such rules as are necessary to implement and enforce

this chapter. Rules may also be adopted by the department of health for the purposes of this chapter. The rules may include procedures for taking appropriate action, in addition to any other penalty under this chapter, with regard to health care facilities or health care providers which violate this chapter or the rules adopted under this chapter. The rules shall prescribe stringent safeguards to protect the confidentiality of the persons and records subject to this chapter. The procedures set forth in chapter 34.05 RCW apply to the administration of this chapter, except that in case of conflict between chapter 34.05 RCW and this chapter, the provisions of this chapter shall control. [1991 c 3 § 325; 1988 c 206 § 915.]

70.24.150 Immunity of certain public employees. Members of the state board of health and local boards of health, public health officers, and employees of the department of health and local health departments are immune from civil action for damages arising out of the good faith performance of their duties as prescribed by this chapter, unless such performance constitutes gross negligence. [1991 c 3 § 326; 1988 c 206 § 918.]

70.24.400 Department to establish regional AIDS service networks—Funding—Lead counties—Regional plans—University of Washington, center for AIDS education. The department shall establish a statewide system of regional acquired immunodeficiency syndrome (AIDS) service networks as follows:

(1) The secretary of health shall direct that all state or federal funds, excluding those from federal Title XIX for services or other activities authorized in this chapter, shall be allocated to the office on AIDS established in RCW 70.24.250. The secretary shall further direct that all funds for services and activities specified in subsection (3) of this section shall be provided to lead counties through contractual agreements based on plans developed as provided in subsection (2) of this section, unless direction of such funds is explicitly prohibited by federal law, federal regulation, or federal policy. The department shall deny funding allocations to lead counties only if the denial is based upon documented incidents of nonfeasance, misfeasance, or malfeasance. However, the department shall give written notice and thirty days for corrective action in incidents of misfeasance or nonfeasance before funding may be denied. The department shall designate six AIDS service network regions encompassing the state. In doing so, the department shall use the boundaries of the regional structures in place for the community services administration on January 1, 1988.

(2) The department shall request that a lead county within each region, which shall be the county with the largest population, prepare, through a cooperative effort of local health departments within the region, a regional organizational and service plan, which meets the requirements set forth in subsection (3) of this section. Efforts should be made to use existing plans, where appropriate. The plan should place emphasis on contracting with existing hospitals, major voluntary

organizations, or health care organizations within a region that have in the past provided quality services similar to those mentioned in subsection (3) of this section and that have demonstrated an interest in providing any of the components listed in subsection (3) of this section. If any of the counties within a region do not participate, it shall be the lead county's responsibility to develop the part of the plan for the nonparticipating county or counties. If all of the counties within a region do not participate, the department shall assume the responsibility.

(3) The regional AIDS service network plan shall include the following components:

(a) A designated single administrative or coordinating agency;

(b) A complement of services to include:

(i) Voluntary and anonymous counseling and testing;

(ii) Mandatory testing and/or counseling services for certain individuals, as required by law;

(iii) Notification of sexual partners of infected persons, as required by law;

(iv) Education for the general public, health professionals, and high-risk groups;

(v) Intervention strategies to reduce the incidence of HIV infection among high-risk groups, possibly including needle sterilization and methadone maintenance;

(vi) Related community outreach services for runaway youth;

(vii) Case management;

(viii) Strategies for the development of volunteer networks;

(ix) Strategies for the coordination of related agencies within the network; and

(x) Other necessary information, including needs particular to the region;

(c) A service delivery model that includes:

(i) Case management services; and

(ii) A community-based continuum-of-care model encompassing both medical, mental health, and social services with the goal of maintaining persons with AIDS in a home-like setting, to the extent possible, in the least-expensive manner; and

(d) Budget, caseload, and staffing projections.

(4) Efforts shall be made by both the counties and the department to use existing service delivery systems, where possible, in developing the networks.

(5) The University of Washington health science program, in cooperation with the office on AIDS may, within available resources, establish a center for AIDS education, which shall be linked to the networks. The center for AIDS education is not intended to engage in state-funded research related to HIV infection, AIDS, or HIV-related conditions. Its duties shall include providing the office on AIDS with the appropriate educational materials necessary to carry out that office's duties.

(6) The department shall implement this section, consistent with available funds, by October 1, 1988, by establishing six regional AIDS service networks whose combined jurisdictions shall include the entire state.

(a) Until June 30, 1991, available funding for each regional AIDS service network shall be allocated as follows:

(i) Seventy-five percent of the amount provided for regional AIDS service networks shall be allocated per capita based on the number of persons residing within each region, but in no case less than one hundred fifty thousand dollars for each regional AIDS service network per fiscal year. This amount shall be expended for testing, counseling, education, case management, notification of sexual partners of infected persons, planning, coordination, and other services required by law, except for those enumerated in (ii) of this subsection.

(ii) Twenty-five percent of the amount provided for regional AIDS service networks shall be allocated for intervention strategies specifically addressing groups that are at a high risk of being infected with the human immunodeficiency virus. The allocation shall be made by the office on AIDS based on documented need as specified in regional AIDS network plans.

(b) After June 30, 1991, the funding shall be allocated as provided by law. By December 15, 1990, the department shall report to the appropriate committees of the legislature on proposed methods of funding regional AIDS service networks.

(7) The regional AIDS service networks shall be the official state regional agencies for AIDS information education and coordination of services. The state public health officer, as designated by the secretary of health, shall make adequate efforts to publicize the existence and functions of the networks.

(8) If the department is not able to establish a network by an agreement solely with counties, it may contract with nonprofit agencies for any or all of the designated network responsibilities.

(9) The department, in establishing the networks, shall study mechanisms that could lead to reduced costs and/or increased access to services. The methods shall include capitation.

(10) The department shall reflect in its departmental biennial budget request the funds necessary to implement this section.

(11) The department shall submit an implementation plan to the appropriate committees of the legislature by July 1, 1988.

(12) The use of appropriate materials may be authorized by regional AIDS service networks in the prevention or control of HIV infection. [1991 c 3 § 327; 1988 c 206 § 801.]

70.24.410 AIDS advisory committee—Duties, review of insurance problems—Termination. To assist the secretary of health in the development and implementation of AIDS programs, the governor shall appoint an AIDS advisory committee. Among its duties shall be a review of insurance problems as related to persons with AIDS. The committee shall terminate on June 30, 1991. [1991 c 3 § 328; 1988 c 206 § 803.]

Chapter 70.30

TUBERCULOSIS HOSPITALS AND FACILITIES

Sections

70.30.081 Annual inspections.

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 health, 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. [1991 c 3 § 329; 1972 ex.s. c 143 § 4.]

Chapter 70.33

STATE ADMINISTERED TUBERCULOSIS HOSPITAL FACILITIES

Sections

70.33.010 Definitions.

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, and 70.32.060 unless the context clearly indicated otherwise:

- (1) "Department" means the department of health;
- (2) "Secretary" means the secretary of the department of health or his or her 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. [1991 c 3 § 330; 1983 c 3 § 171; 1971 ex.s. c 277 § 15.]

Chapter 70.38

HEALTH PLANNING AND DEVELOPMENT

Sections

70.38.025 Definitions.
 70.38.105 Health services and facilities requiring certificate of need—Fees.
 70.38.111 Certificates of need—Exemptions.
 70.38.220 Ethnic minorities—Nursing home beds that reflect cultural differences.

70.38.025 Definitions. When used in this chapter, the terms defined in this section shall have the meanings indicated.

- (1) "Board of health" means the state board of health created pursuant to chapter 43.20 RCW.
- (2) "Capital expenditure" is an expenditure, including a force account expenditure (i.e., an expenditure for a construction project undertaken by a nursing home facility as its own contractor) which, under generally accepted accounting principles, is not properly chargeable

as an expense of operation or maintenance. Where a person makes an acquisition under lease or comparable arrangement, or through donation, which would have required review if the acquisition had been made by purchase, such expenditure shall be deemed a capital expenditure. Capital expenditures include donations of equipment or facilities to a nursing home facility which if acquired directly by such facility would be subject to certificate of need review under the provisions of this chapter and transfer of equipment or facilities for less than fair market value if a transfer of the equipment or facilities at fair market value would be subject to such review. The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which such expenditure is made shall be included in determining the amount of the expenditure.

(3) "Continuing care retirement community" means an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service. A "continuing care contract" means a contract to provide a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

(4) "Department" means the department of health.

(5) "Expenditure minimum" means, for the purposes of the certificate of need program, one million dollars adjusted by the department by rule to reflect changes in the United States department of commerce composite construction cost index; or a lesser amount required by federal law and established by the department by rule.

(6) "Health care facility" means hospices, hospitals, psychiatric hospitals, nursing homes, kidney disease treatment centers, ambulatory surgical facilities, and home health agencies, and includes such facilities when owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations, but does not include Christian Science sanatoriums operated, listed, or certified by the First Church of Christ Scientist, Boston, Massachusetts. In addition, the term does not include any nonprofit hospital: (a) Which is operated exclusively to provide health care services for children; (b) which does not charge fees for such services; and (c) if not contrary to federal law as necessary to the receipt of federal funds by the state.

(7) "Health maintenance organization" means a public or private organization, organized under the laws of the state, which:

- (a) Is a qualified health maintenance organization under Title XIII, section 1310(d) of the Public Health Services Act; or

(b)(i) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: Usual physician services, hospitalization, laboratory, x-ray, emergency, and preventive services, and out-of-area coverage; (ii) is compensated (except for copayments) for the provision of the basic health care services listed in (b)(i) to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and (iii) provides physicians' services primarily (A) directly through physicians who are either employees or partners of such organization, or (B) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(8) "Health services" means clinically related (i.e., preventive, diagnostic, curative, rehabilitative, or palliative) services and includes alcoholism, drug abuse, and mental health services and as defined in federal law.

(9) "Health service area" means a geographic region appropriate for effective health planning which includes a broad range of health services.

(10) "Person" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), the state, or a political subdivision or instrumentality of the state, including a municipal corporation or a hospital district.

(11) "Provider" generally means a health care professional or an organization, institution, or other entity providing health care but the precise definition for this term shall be established by rule of the department, consistent with federal law.

(12) "Public health" means the level of well-being of the general population; those actions in a community necessary to preserve, protect, and promote the health of the people for which government is responsible; and the governmental system developed to guarantee the preservation of the health of the people.

(13) "Secretary" means the secretary of health or the secretary's designee.

(14) "Tertiary health service" means a specialized service that meets complicated medical needs of people and requires sufficient patient volume to optimize provider effectiveness, quality of service, and improved outcomes of care.

(15) "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. [1991 c 158 § 1; 1989 1st ex.s. c 9 § 602; 1988 c 20 § 1; 1983 1st ex.s. c 41 § 43; 1983 c 235 § 2; 1982 c 119 § 1; 1980 c 139 § 2; 1979 ex.s. c 161 § 2.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

70.38.105 Health services and facilities requiring certificate of need—Fees. (1) The department is authorized and directed to implement the certificate of need program in this state pursuant to the provisions of this chapter.

(2) There shall be a state certificate of need program which is administered consistent with the requirements of federal law as necessary to the receipt of federal funds by the state.

(3) No person shall engage in any undertaking which is subject to certificate of need review under subsection (4) of this section without first having received from the department either a certificate of need or an exception granted in accordance with this chapter.

(4) The following shall be subject to certificate of need review under this chapter:

(a) The construction, development, or other establishment of a new health care facility;

(b) The sale, purchase, or lease of part or all of any existing hospital as defined in RCW 70.38.025;

(c) Any capital expenditure for the construction, renovation, or alteration of a nursing home which substantially changes the services of the facility after January 1, 1981, provided that the substantial changes in services are specified by the department in rule;

(d) Any capital expenditure for the construction, renovation, or alteration of a nursing home which exceeds the expenditure minimum as defined by RCW 70.38-.025. However, a capital expenditure which is not subject to certificate of need review under (a), (b), (c), or (e) of this subsection and which is solely for any one or more of the following is not subject to certificate of need review except to the extent required by the federal government as a condition to receipt of federal assistance and does not substantially affect patient charges:

(i) Communications and parking facilities;

(ii) Mechanical, electrical, ventilation, heating, and air conditioning systems;

(iii) Energy conservation systems;

(iv) Repairs to, or the correction of, deficiencies in existing physical plant facilities which are necessary to maintain state licensure;

(v) Acquisition of equipment, including data processing equipment, which is not or will not be used in the direct provision of health services;

(vi) Construction which involves physical plant facilities, including administrative and support facilities, which are not or will not be used for the provision of health services;

(vii) Acquisition of land; and

(viii) Refinancing of existing debt;

(e) A change in bed capacity of a health care facility which increases the total number of licensed beds or redistributes beds among acute care, nursing home care, and boarding home care if the bed redistribution is to be effective for a period in excess of six months;

(f) Any new tertiary health services which are offered in or through a health care facility, and which were not offered on a regular basis by, in, or through such health care facility within the twelve-month period prior to the time such services would be offered;

(g) Any expenditure for the construction, renovation, or alteration of a nursing home or change in nursing home services in excess of the expenditure minimum

made in preparation for any undertaking under subsection (4) of this section and any arrangement or commitment made for financing such undertaking. Expenditures of preparation shall include expenditures for architectural designs, plans, working drawings, and specifications. The department may issue certificates of need permitting predevelopment expenditures, only, without authorizing any subsequent undertaking with respect to which such predevelopment expenditures are made; and

(h) Any increase in the number of dialysis stations in a kidney disease center.

(5) The department is authorized to charge fees for the review of certificate of need applications and requests for exemptions from certificate of need review. The fees shall be sufficient to cover the full cost of review and exemption, which may include the development of standards, criteria, and policies.

(6) No person may divide a project in order to avoid review requirements under any of the thresholds specified in this section. [1991 1st sp.s. c 8 § 4; 1989 1st ex.s. c 9 § 603; 1984 c 288 § 21; 1983 c 235 § 7; 1982 c 119 § 2; 1980 c 139 § 7; 1979 ex.s. c 161 § 10.]

Effective date—1991 1st sp.s. c 8: See note following RCW 18.51.050.

Severability—1984 c 288: See note following RCW 70.39.010.

Effective date—1980 c 139: See RCW 70.38.916.

Effective dates—1979 ex.s. c 161: See RCW 70.38.915.

70.38.111 Certificates of need—Exemptions. (1) The department shall not require a certificate of need for the offering of an inpatient tertiary health service by:

(a) A health maintenance organization or a combination of health maintenance organizations if (i) the organization or combination of organizations has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (ii) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization or organizations in the combination;

(b) A health care facility if (i) the facility primarily provides or will provide inpatient health services, (ii) the facility is or will be controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations which has, in the service area of the organization or service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (iii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iv) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization or organizations in the combination; or

(c) A health care facility (or portion thereof) if (i) the facility is or will be leased by a health maintenance organization or combination of health maintenance organizations which has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals and, on the date the application is submitted under subsection (2) of this section, at least fifteen years remain in the term of the lease, (ii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization;

if, with respect to such offering or obligation by a nursing home, the department has, upon application under subsection (2) of this section, granted an exemption from such requirement to the organization, combination of organizations, or facility.

(2) A health maintenance organization, combination of health maintenance organizations, or health care facility shall not be exempt under subsection (1) of this section from obtaining a certificate of need before offering a tertiary health service unless:

(a) It has submitted at least thirty days prior to the offering of services reviewable under RCW 70.38.105(4)(d) an application for such exemption; and

(b) The application contains such information respecting the organization, combination, or facility and the proposed offering or obligation by a nursing home as the department may require to determine if the organization or combination meets the requirements of subsection (1) of this section or the facility meets or will meet such requirements; and

(c) The department approves such application. The department shall approve or disapprove an application for exemption within thirty days of receipt of a completed application. In the case of a proposed health care facility (or portion thereof) which has not begun to provide tertiary health services on the date an application is submitted under this subsection with respect to such facility (or portion), the facility (or portion) shall meet the applicable requirements of subsection (1) of this section when the facility first provides such services. The department shall approve an application submitted under this subsection if it determines that the applicable requirements of subsection (1) of this section are met.

(3) A health care facility (or any part thereof) with respect to which an exemption was granted under subsection (1) of this section may not be sold or leased and a controlling interest in such facility or in a lease of such facility may not be acquired and a health care facility described in (1)(c) which was granted an exemption under subsection (1) of this section may not be used by any person other than the lessee described in (1)(c) unless:

(a) The department issues a certificate of need approving the sale, lease, acquisition, or use; or

(b) The department determines, upon application, that (i) the entity to which the facility is proposed to be sold

or leased, which intends to acquire the controlling interest, or which intends to use the facility is a health maintenance organization or a combination of health maintenance organizations which meets the requirements of (1)(a)(i), and (ii) with respect to such facility, meets the requirements of (1)(a) (ii) or (iii) or the requirements of (1)(b) (i) and (ii).

(4) In the case of a health maintenance organization, an ambulatory care facility, or a health care facility, which ambulatory or health care facility is controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations, the department may under the program apply its certificate of need requirements only to the offering of inpatient tertiary health services and then only to the extent that such offering is not exempt under the provisions of this section.

(5)(a) The department shall not require a certificate of need for the construction, development, or other establishment of a nursing home, or the addition of beds to an existing nursing home, that is owned and operated by a continuing care retirement community that:

- (i) Offers services only to contractual members;
- (ii) Provides its members a contractually guaranteed range of services from independent living through skilled nursing, including some assistance with daily living activities;
- (iii) Contractually assumes responsibility for the cost of services exceeding the member's financial responsibility under the contract, so that no third party, with the exception of insurance purchased by the retirement community or its members, but including the medicaid program, is liable for costs of care even if the member depletes his or her personal resources;
- (iv) Has offered continuing care contracts and operated a nursing home continuously since January 1, 1988, or has obtained a certificate of need to establish a nursing home;
- (v) Maintains a binding agreement with the state assuring that financial liability for services to members, including nursing home services, will not fall upon the state;
- (vi) Does not operate, and has not undertaken a project that would result in a number of nursing home beds in excess of one for every four living units operated by the continuing care retirement community, exclusive of nursing home beds; and
- (vii) Has obtained a professional review of pricing and long-term solvency within the prior five years which was fully disclosed to members.

(b) A continuing care retirement community shall not be exempt under this subsection from obtaining a certificate of need unless:

- (i) It has submitted an application for exemption at least thirty days prior to commencing construction of, is submitting an application for the licensure of, or is commencing operation of a nursing home, whichever comes first; and
- (ii) The application documents to the department that the continuing care retirement community qualifies for exemption.

(c) The sale, lease, acquisition, or use of part or all of a continuing care retirement community nursing home that qualifies for exemption under this subsection shall require prior certificate of need approval to qualify for licensure as a nursing home unless the department determines such sale, lease, acquisition, or use is by a continuing care retirement community that meets the conditions of (a) of this subsection. [1991 c 158 § 2; 1989 1st ex.s. c 9 § 604; 1982 c 119 § 3; 1980 c 139 § 9.]

70.38.220 Ethnic minorities—Nursing home beds that reflect cultural differences. (1) The legislature recognizes that in this state ethnic minorities currently use nursing home care at a lower rate than the general population. The legislature also recognizes and supports the federal mandate that nursing homes receiving federal funds provide residents with a homelike environment. The legislature finds that certain ethnic minorities have special cultural, language, dietary, and other needs not generally met by existing nursing homes which are intended to serve the general population. Accordingly, the legislature further finds that there is a need to foster the development of nursing homes designed to serve the special cultural, language, dietary, and other needs of ethnic minorities.

(2) The department shall establish a separate pool of no more than two hundred fifty beds for nursing homes designed to serve the special needs of ethnic minorities. The pool shall be made up of nursing home beds that become available on or after March 15, 1991, due to:

- (a) Loss of license or reduction in licensed bed capacity if the beds are not otherwise obligated for replacement; or
 - (b) Expiration of a certificate of need.
- (3) The department shall develop procedures for the fair and efficient award of beds from the special pool. In making its decisions regarding the award of beds from the pool, the department shall consider at least the following:

- (a) The relative degree to which the long-term care needs of an ethnic minority are not otherwise being met;
- (b) The percentage of low-income persons who would be served by the proposed nursing home;
- (c) The financial feasibility of the proposed nursing home; and
- (d) The impact of the proposal on the area's total need for nursing home beds.

(4) To be eligible to apply for or receive an award of beds from the special pool, an application must be to build a new nursing home, or add beds to a nursing home, that:

- (a) Will be owned and operated by a nonprofit corporation, and at least fifty percent of the board of directors of the corporation are members of the ethnic minority the nursing home is intended to serve;
- (b) Will be designed, managed, and administered to serve the special cultural, language, dietary, and other needs of an ethnic minority; and

(c) Will not discriminate in admissions against persons who are not members of the ethnic minority whose special needs the nursing home is designed to serve.

(5) If a nursing home or portion of a nursing home that is built as a result of an award from the special pool is sold or leased within ten years to a party not eligible under subsection (4) of this section:

(a) The purchaser or lessee may not operate those beds as nursing home beds without first obtaining a certificate of need for new beds under this chapter; and

(b) The beds that had been awarded from the special pool shall be returned to the special pool.

(6) The department shall initially award up to one hundred beds before that number of beds are actually in the special pool, provided that the number of beds so awarded are subtracted from the total of two hundred fifty beds that can be awarded from the special pool. [1991 c 271 § 1.]

Chapter 70.39

HOSPITAL HEALTH CARE SERVICES— HOSPITAL COMMISSION

Sections

70.39.170 Budget—Expenses—Assessments—Hospital commission account.

70.39.170 Budget—Expenses—Assessments—Hospital commission account.

Reviser's note: This section was repealed on June 30, 1990, as part of the sunset of the hospital commission under RCW 43.131.254. The 1991 legislator erroneously amended this repealed section. The code reviser is decodifying this section, RCW 70.39.170, pursuant to RCW 1.12.025.

Effective dates—1991 1st sp.s. c 13: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions.

(1) On or before June 30, 1991, the balances remaining in the local jail improvement and construction account, the 1979 handicapped facilities construction account, the salmon enhancement construction account, the community college capital improvements accounts, and the fisheries capital projects account shall be transferred to the state building construction account and the balance remaining in the Washington State University construction account shall be transferred to the Washington State University building account.

(2) Except for subsection (1) of this section, sections 1 through 47, 49 through 64, 66 through 108, and 110 through 122 of this act shall take effect July 1, 1991, but shall not be effective for earnings on balances prior to July 1, 1991, regardless of when a distribution is made.

(3) Sections 48 and 109 of this act shall take effect September 1, 1991.

(4) Section 65 of this act shall take effect January 1, 1992.

(5) *Sections 123 through 139 of this act shall take effect July 1, 1993, and shall be effective for earnings on balances beginning July 1, 1993, regardless of when a distribution is made." [1991 1st sp.s. c 13 § 141.]

***Reviser's note:** "Sections 123 through 139 of this act" [1991 1st sp.s. c 13] were vetoed by the governor.

Severability—1991 1st sp.s. c 13: "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." [1991 1st sp.s. c 13 § 140.]

Effective date—1985 c 57: See note following RCW 15.52.320.

Chapter 70.40

HOSPITAL AND MEDICAL FACILITIES SURVEY AND CONSTRUCTION ACT

Sections

70.40.020 Definitions.
70.40.030 Section of hospital and medical facility survey and construction established—Duties.
70.40.150 Hospital and medical facility construction fund—Deposits, use.

70.40.020 Definitions. As used in this chapter:

(1) "Secretary" means the secretary 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. [1991 c 3 § 331; 1979 c 141 § 96; 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 secretary. 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. [1991 c 3 § 332; 1979 c 141 § 97; 1959 c 252 § 3; 1949 c 197 § 3; Rem. Supp. 1949 § 6090-62.]

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 health and shall bear the signature of the secretary or his or her duly authorized agent for such purpose, and warrants therefor shall be signed by the state treasurer. [1991 c 3 § 333; 1973 c 106 § 31; 1959 c 252 § 11; 1949 c 197 § 15; Rem. Supp. 1949 § 6090–74.]

Chapter 70.41

HOSPITAL LICENSING AND REGULATION

Sections

70.41.020	Definitions.
70.41.130	Denial, suspension, revocation, modification of license—Procedure.
70.41.200	Medical malpractice prevention program—Quality assurance committee—Sanction and grievance procedures—Information collection and reporting.
70.41.230	Duty of hospital to request information on physicians granted privileges.
70.41.240	Information regarding conversion of hospitals to non-hospital health care facilities.

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 health;

(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 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. [1991 c 3 § 334; 1985 c 213 § 16; 1971 ex.s. c 189 § 8; 1955 c 267 § 2.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.130 Denial, suspension, revocation, modification of license—Procedure. The department is authorized to deny, suspend, revoke, or modify a license or provisional license 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 or rules adopted under this chapter. RCW 43.70.115 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding. [1991 c 3 § 335; 1989 c 175 § 128; 1985 c 213 § 22; 1955 c 267 § 13.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.200 Medical malpractice prevention program—Quality assurance committee—Sanction and grievance procedures—Information collection and reporting. (1) Every hospital shall maintain a coordinated program for the identification and prevention of medical malpractice. The program shall include at least the following:

(a) The establishment of a quality assurance committee with the responsibility to review the services rendered in the hospital in order to improve the quality of medical care of patients and to prevent medical malpractice. The committee shall oversee and coordinate the medical malpractice prevention program and shall insure that information gathered pursuant to the program is used to review and to revise hospital policies and procedures. At least one member of the committee shall be a member of the governing board of the hospital who is not otherwise affiliated with the hospital in an employment or contractual capacity;

(b) A medical staff privileges sanction procedure through which credentials, physical and mental capacity, and competence in delivering health care services are periodically reviewed as part of an evaluation of staff privileges;

(c) The periodic review of the credentials, physical and mental capacity, and competence in delivering health care services of all persons who are employed or associated with the hospital;

(d) A procedure for the prompt resolution of grievances by patients or their representatives related to accidents, injuries, treatment, and other events that may result in claims of medical malpractice;

(e) The maintenance and continuous collection of information concerning the hospital's experience with negative health care outcomes and incidents injurious to patients, patient grievances, professional liability premiums, settlements, awards, costs incurred by the hospital for patient injury prevention, and safety improvement activities;

(f) The maintenance of relevant and appropriate information gathered pursuant to (a) through (e) of this subsection concerning individual physicians within the physician's personnel or credential file maintained by the hospital;

(g) Education programs dealing with patient safety, injury prevention, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with patients, and causes of malpractice claims for staff personnel engaged in patient care activities; and

(h) Policies to ensure compliance with the reporting requirements of this section.

(2) Any person who, in substantial good faith, provides information to further the purposes of the medical malpractice prevention program or who, in substantial good faith, participates on the quality assurance committee shall not be subject to an action for civil damages or other relief as a result of such activity.

(3) Information and documents, including complaints and incident reports, created, collected, and maintained about health care providers arising out of the matters that are under review or have been evaluated by a review committee conducting quality assurance reviews are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or board shall be permitted or required to testify in any civil action as to the content of such proceedings. This subsection does not preclude:

(a) In any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (b) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality assurance committees regarding such health care provider; (c) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any; or (d) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

(4) The department of health shall adopt such rules as are deemed appropriate to effectuate the purposes of this section.

(5) The medical disciplinary board or the board of osteopathic medicine and surgery, as appropriate, may review and audit the records of committee decisions in which a physician's privileges are terminated or restricted. Each hospital shall produce and make accessible to the board the appropriate records and otherwise facilitate the review and audit. Information so gained shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section. Failure of a hospital to comply with this subsection is punishable by a civil penalty not to exceed two hundred fifty dollars.

(6) Violation of this section shall not be considered negligence per se. [1991 c 3 § 336; 1987 c 269 § 5; 1986 c 300 § 4.]

Legislative findings—Severability—1986 c 300: See notes following RCW 18.72.040.

70.41.230 Duty of hospital to request information on physicians granted privileges. (1) Prior to granting or renewing clinical privileges or association of any physician or hiring a physician, a hospital or facility approved pursuant to this chapter shall request from the physician and the physician shall provide the following information:

(a) The name of any hospital or facility with or at which the physician had or has any association, employment, privileges, or practice;

(b) If such association, employment, privilege, or practice was discontinued, the reasons for its discontinuation;

(c) Any pending professional medical misconduct proceedings or any pending medical malpractice actions in this state or another state, the substance of the allegations in the proceedings or actions, and any additional information concerning the proceedings or actions as the physician deems appropriate;

(d) The substance of the findings in the actions or proceedings and any additional information concerning the actions or proceedings as the physician deems appropriate;

(e) A waiver by the physician of any confidentiality provisions concerning the information required to be provided to hospitals pursuant to this subsection; and

(f) A verification by the physician that the information provided by the physician is accurate and complete.

(2) Prior to granting privileges or association to any physician or hiring a physician, a hospital or facility approved pursuant to this chapter shall request from any hospital with or at which the physician had or has privileges, was associated, or was employed, the following information concerning the physician:

(a) Any pending professional medical misconduct proceedings or any pending medical malpractice actions, in this state or another state;

(b) Any judgment or settlement of a medical malpractice action and any finding of professional misconduct in this state or another state by a licensing or disciplinary board; and

(c) Any information required to be reported by hospitals pursuant to RCW 18.72.265.

(3) The medical disciplinary board shall be advised within thirty days of the name of any physician denied staff privileges, association, or employment on the basis of adverse findings under subsection (1) of this section.

(4) A hospital or facility that receives a request for information from another hospital or facility pursuant to subsections (1) and (2) of this section shall provide such information concerning the physician in question to the extent such information is known to the hospital or facility receiving such a request, including the reasons for suspension, termination, or curtailment of employment or privileges at the hospital or facility. A hospital, facility, or other person providing such information in good faith is not liable in any civil action for the release of such information.

(5) Information and documents, including complaints and incident reports, created, collected, and maintained about health care providers arising out of the matters that are under review or have been evaluated by a review committee conducting quality assurance reviews are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or board shall be permitted or required to testify in any civil action as to the content of such proceedings. This subsection does not preclude:

(a) In any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings;

(b) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality assurance committees regarding such health care provider;

(c) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any; or

(d) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

(6) Hospitals shall be granted access to information held by the medical disciplinary board and the board of osteopathic medicine and surgery pertinent to decisions of the hospital regarding credentialing and recredentialing of practitioners.

(7) Violation of this section shall not be considered negligence per se. [1991 c 3 § 337; 1987 c 269 § 6; 1986 c 300 § 11.]

Legislative findings—Severability—1986 c 300: See notes following RCW 18.72.040.

70.41.240 Information regarding conversion of hospitals to nonhospital health care facilities. The department of health shall compile and make available to the public

information regarding medicare health care facility certification options available to hospitals licensed under this title that desire to convert to nonhospital health care facilities. The information provided shall include standards and requirements for certification and procedures for acquiring certification. [1991 c 3 § 338; 1988 c 207 § 3.]

Resources and staffing—1988 c 207: "The department of community development, department of trade and economic development, department of employment security, and department of social and health services are expected to use their present resources and staffing to carry out the requirements of this act." [1988 c 207 § 4.] For codification of "this act" [1988 c 207], see Codification Tables, Volume 0.

Chapter 70.44

PUBLIC HOSPITAL DISTRICTS

Sections

70.44.020	Resolution—Petition for county-wide district— Conduct of elections.
70.44.040	Elections—Terms of commissioners.
70.44.060	Powers and duties.

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 county legislative authority of a county may, or on petition of ten percent of the registered voters 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 the auditor 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 the certificate thereto. No person signing the petition may withdraw his or her name therefrom after filing. When the petition is certified as sufficient, the auditor shall forthwith transmit it, together with the certificate of sufficiency attached thereto, to the county legislative authority, 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, shall call a special election on such proposition in accordance with RCW 29.13.010 and 29.13.020. 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.

[1990 c 259 § 38; 1955 c 135 § 1; 1945 c 264 § 3; Rem. Supp. 1945 § 6090–32.]

70.44.040 Elections—Terms of commissioners.

The provisions of Title 29 RCW relating to elections shall govern public hospital districts, except that: (1) The total vote cast upon the proposition to form a hospital district shall exceed forty percent of the total number of votes cast in the precincts comprising the proposed district at the preceding general and county election; and (2) 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 first day in January 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. The first commissioners to be elected shall take office immediately when qualified in accordance with RCW 29.01.135. Each term of the initial commissioners shall date from the time above specified following the organizational election, but shall also include the period intervening between the organizational election and the first day of January following the next district general election: 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 the 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 first day 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 the 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. [1990 c 259 § 39; 1979 ex.s. c 126 § 41; 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.]

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

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.

(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) of this section.

(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 and sell: (a) Revenue bonds, revenue warrants, or other revenue obligations 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, warrants, or other obligations to be issued and sold in the same manner and subject to the same provisions as provided for the issuance of revenue bonds, warrants, or other obligations by cities or towns under the Municipal Revenue Bond Act, chapter 35.41 RCW, as may hereafter be amended; (b) general obligation bonds therefor in the manner and form as provided in RCW 70.44.110 and 70.44.130, as may hereafter be amended; or (c) interest-bearing warrants to be drawn on a fund pending deposit in such fund of money sufficient to redeem such warrants and to be issued and paid in such manner and upon such terms and conditions as the board of commissioners may deem to be in the best interest of the district; 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. General obligation bonds shall be issued and sold in accordance with chapter 39.46 RCW. Revenue bonds, revenue warrants, or other revenue obligations may be issued and sold in accordance with chapter 39.46 RCW.

(6) To raise revenue by the levy of an annual tax on all taxable property within such public hospital district not to exceed fifty cents per thousand dollars of assessed value, and an additional annual tax on all taxable property within such public hospital district not to exceed twenty-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. Although public hospital districts are authorized to impose two separate regular property tax levies, the levies shall be considered to be a single levy for purposes of the one hundred six percent limitation provided for in chapter 84.55 RCW. Public hospital districts are authorized to levy such a general tax in excess of their regular property taxes 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 authorized and empowered to call a special election for the purpose of submitting to the qualified voters of the hospital district a proposition or propositions to levy taxes in excess of its regular property taxes. 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 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 pay actual necessary travel expenses and living expenses incurred while in travel status for (a) qualified physicians who are candidates for medical staff positions, and (b) other qualified persons who are candidates for superintendent or other managerial and technical positions, when the district finds that hospitals or other health care facilities owned and operated by it are not adequately staffed and determines that personal interviews with said candidates to be held in the district are necessary or desirable for the adequate staffing of said facilities.

(10) 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. [1990 c 234 § 2; 1984 c 186 § 59; 1983 c 167 § 172; 1982 c 84 § 15; 1979 ex.s. c 155 § 1; 1979 ex.s. c 143 § 4; 1977 ex.s. c 211 § 1; 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.]

Purpose—1984 c 186: See note following RCW 39.46.110.

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

Severability—1979 ex.s. c 155: "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." [1979 ex.s. c 155 § 3.]

Severability—1979 ex.s. c 143: See note following RCW 70.44.200.

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 39.52.020.

Purpose—**Severability**—1967 c 164: See notes following RCW 4.96.010.

Eminent domain

by cities: Chapter 8.12 RCW.

generally: State Constitution Art. 1 § 16.

Limitation on levies: State Constitution Art. 7 § 2; 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.

Chapter 70.46

HEALTH DISTRICTS

Sections

70.46.030 Districts of one county—Board of health—Membership—Chairman.

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 county legislative authority 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 county legislative authority of the county: **PROVIDED**, That if such health district consists of a county with a population of from seventy thousand to less than one hundred twenty-five thousand, the district board of health shall consist of not less than six members, including the three members of the county legislative authority 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. [1991 c 363 § 141; 1969 ex.s. c 70 § 1; 1967 ex.s. c 51 § 5; 1945 c 183 § 3; Rem. Supp. 1945 § 6099-12.]

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

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

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Chapter 70.47

HEALTH CARE ACCESS ACT

Sections

70.47.030 Basic health plan trust account (as amended by 1991 1st sp.s. c 4).

70.47.030 Basic health plan trust account (as amended by 1991 1st sp.s. c 13).

70.47.060 Powers and duties of administrator.

70.47.110 Enrollment of medical assistance recipients.

70.47.115 Enrollment of dislocated forest products workers.

70.47.150 Public disclosure.

Reviser's note—**Sunset Act Application**: The basic health plan is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.355. RCW 70.47.010 through 70.47.140, 70.47.900, 50.20.210, 51.28.090, and 74.04.033 are scheduled for future repeal under RCW 43.131.356.

70.47.030 Basic health plan trust account (as amended by 1991 1st sp.s. c 4). The basic health plan trust account is hereby established in the state treasury. All nongeneral fund—state funds (~~(appropriated)~~) collected for this (~~(chapter)~~) program shall be deposited in the basic health plan trust account and may be expended without further appropriation. (~~(Disbursements from other moneys in the account shall be made pursuant to appropriation and upon warrants drawn by the Washington basic health plan administrator.)~~) Moneys in the account shall be used exclusively for the purposes of this chapter, including payments to participating managed health care systems on behalf of enrollees in the plan and payment of costs of administering the plan. (~~(The earnings on any surplus balances in the basic health plan trust account shall be credited to the account, notwithstanding RCW 43.84.090.)~~) After (~~(January 1, 1988)~~) July 1, 1991, the administrator shall not expend or encumber for an ensuing fiscal period amounts exceeding (~~(ninety)~~) ninety-five percent of the amount(~~(s)~~) anticipated to (~~(accrue in the account)~~) be spent for purchased services during the fiscal (~~(period)~~) year. [1991 1st sp.s. c 4 § 1; 1987 1st ex.s. c 5 § 5.]

Effective date—1991 1st sp.s. c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 1st sp.s. c 4 § 4.]

70.47.030 Basic health plan trust account (as amended by 1991 1st sp.s. c 13). The basic health plan trust account is hereby established in the state treasury. All funds appropriated for this chapter shall be deposited in the basic health plan trust account and may be expended without further appropriation. Disbursements from other moneys in the account shall be made pursuant to appropriation and upon warrants drawn by the Washington basic health plan administrator. Moneys in the account shall be used exclusively for the purposes of this chapter, including payments to participating managed health care systems on behalf of enrollees in the plan and payment of costs of administering the plan. (~~(The earnings on any surplus balances in the basic health plan trust account shall be credited to the account, notwithstanding RCW 43.84.090. After January 1, 1988.)~~) The administrator shall not expend or encumber for an ensuing fiscal period amounts exceeding ninety percent of the amounts anticipated to accrue in the account during the fiscal period. [1991 1st sp.s. c 13 § 68; 1987 1st ex.s. c 5 § 5.]

Reviser's note: RCW 70.47.030 was amended twice during the 1991 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Sunset Act application: See note following chapter digest.

Effective dates—**Severability**—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

70.47.060 Powers and duties of administrator. The administrator has the following powers and duties:

(1) To design and from time to time revise a schedule of covered basic health care services, including physician services, inpatient and outpatient hospital services, and

other services that may be necessary for basic health care, which enrollees in any participating managed health care system under the Washington basic health plan shall be entitled to receive in return for premium payments to the plan. The schedule of services shall emphasize proven preventive and primary health care, shall include all services necessary for prenatal, postnatal, and well-child care, and shall include a separate schedule of basic health care services for children, eighteen years of age and younger, for those enrollees who choose to secure basic coverage through the plan only for their dependent children. In designing and revising the schedule of services, the administrator shall consider the guidelines for assessing health services under the mandated benefits act of 1984, RCW 48.42.080, and such other factors as the administrator deems appropriate.

(2) To design and implement a structure of periodic premiums due the administrator from enrollees that is based upon gross family income, giving appropriate consideration to family size as well as the ages of all family members. The enrollment of children shall not require the enrollment of their parent or parents who are eligible for the plan.

(3) To design and implement a structure of nominal copayments due a managed health care system from enrollees. The structure shall discourage inappropriate enrollee utilization of health care services, but shall not be so costly to enrollees as to constitute a barrier to appropriate utilization of necessary health care services.

(4) To design and implement, in concert with a sufficient number of potential providers in a discrete area, an enrollee financial participation structure, separate from that otherwise established under this chapter, that has the following characteristics:

(a) Nominal premiums that are based upon ability to pay, but not set at a level that would discourage enrollment;

(b) A modified fee-for-services payment schedule for providers;

(c) Coinsurance rates that are established based on specific service and procedure costs and the enrollee's ability to pay for the care. However, coinsurance rates for families with incomes below one hundred twenty percent of the federal poverty level shall be nominal. No coinsurance shall be required for specific proven prevention programs, such as prenatal care. The coinsurance rate levels shall not have a measurable negative effect upon the enrollee's health status; and

(d) A case management system that fosters a provider-enrollee relationship whereby, in an effort to control cost, maintain or improve the health status of the enrollee, and maximize patient involvement in her or his health care decision-making process, every effort is made by the provider to inform the enrollee of the cost of the specific services and procedures and related health benefits.

The potential financial liability of the plan to any such providers shall not exceed in the aggregate an amount greater than that which might otherwise have been incurred by the plan on the basis of the number of enrollees multiplied by the average of the prepaid

capitated rates negotiated with participating managed health care systems under RCW 70.47.100 and reduced by any sums charged enrollees on the basis of the coinsurance rates that are established under this subsection.

(5) To limit enrollment of persons who qualify for subsidies so as to prevent an overexpenditure of appropriations for such purposes. Whenever the administrator finds that there is danger of such an overexpenditure, the administrator shall close enrollment until the administrator finds the danger no longer exists.

(6) To adopt a schedule for the orderly development of the delivery of services and availability of the plan to residents of the state, subject to the limitations contained in RCW 70.47.080.

In the selection of any area of the state for the initial operation of the plan, the administrator shall take into account the levels and rates of unemployment in different areas of the state, the need to provide basic health care coverage to a population reasonably representative of the portion of the state's population that lacks such coverage, and the need for geographic, demographic, and economic diversity.

Before July 1, 1988, the administrator shall endeavor to secure participation contracts with managed health care systems in discrete geographic areas within at least five congressional districts.

(7) To solicit and accept applications from managed health care systems, as defined in this chapter, for inclusion as eligible basic health care providers under the plan. The administrator shall endeavor to assure that covered basic health care services are available to any enrollee of the plan from among a selection of two or more participating managed health care systems. In adopting any rules or procedures applicable to managed health care systems and in its dealings with such systems, the administrator shall consider and make suitable allowance for the need for health care services and the differences in local availability of health care resources, along with other resources, within and among the several areas of the state.

(8) To receive periodic premiums from enrollees, deposit them in the basic health plan operating account, keep records of enrollee status, and authorize periodic payments to managed health care systems on the basis of the number of enrollees participating in the respective managed health care systems.

(9) To accept applications from individuals residing in areas served by the plan, on behalf of themselves and their spouses and dependent children, for enrollment in the Washington basic health plan, to establish appropriate minimum-enrollment periods for enrollees as may be necessary, and to determine, upon application and at least annually thereafter, or at the request of any enrollee, eligibility due to current gross family income for sliding scale premiums. An enrollee who remains current in payment of the sliding-scale premium, as determined under subsection (2) of this section, and whose gross family income has risen above twice the federal poverty level, may continue enrollment unless and until the enrollee's gross family income has remained above twice the poverty level for six consecutive months, by making

payment at the unsubsidized rate required for the managed health care system in which he or she may be enrolled. No subsidy may be paid with respect to any enrollee whose current gross family income exceeds twice the federal poverty level or, subject to RCW 70.47.110, who is a recipient of medical assistance or medical care services under chapter 74.09 RCW. If a number of enrollees drop their enrollment for no apparent good cause, the administrator may establish appropriate rules or requirements that are applicable to such individuals before they will be allowed to re-enroll in the plan.

(10) To determine the rate to be paid to each participating managed health care system in return for the provision of covered basic health care services to enrollees in the system. Although the schedule of covered basic health care services will be the same for similar enrollees, the rates negotiated with participating managed health care systems may vary among the systems. In negotiating rates with participating systems, the administrator shall consider the characteristics of the populations served by the respective systems, economic circumstances of the local area, the need to conserve the resources of the basic health plan trust account, and other factors the administrator finds relevant.

(11) To monitor the provision of covered services to enrollees by participating managed health care systems in order to assure enrollee access to good quality basic health care, to require periodic data reports concerning the utilization of health care services rendered to enrollees in order to provide adequate information for evaluation, and to inspect the books and records of participating managed health care systems to assure compliance with the purposes of this chapter. In requiring reports from participating managed health care systems, including data on services rendered enrollees, the administrator shall endeavor to minimize costs, both to the managed health care systems and to the administrator. The administrator shall coordinate any such reporting requirements with other state agencies, such as the insurance commissioner and the department of health, to minimize duplication of effort.

(12) To monitor the access that state residents have to adequate and necessary health care services, determine the extent of any unmet needs for such services or lack of access that may exist from time to time, and make such reports and recommendations to the legislature as the administrator deems appropriate.

(13) To evaluate the effects this chapter has on private employer-based health care coverage and to take appropriate measures consistent with state and federal statutes that will discourage the reduction of such coverage in the state.

(14) To develop a program of proven preventive health measures and to integrate it into the plan wherever possible and consistent with this chapter.

(15) To provide, consistent with available resources, technical assistance for rural health activities that endeavor to develop needed health care services in rural parts of the state. [1991 1st sp.s. c 4 § 2; 1991 c 3 § 339; 1987 1st ex.s. c 5 § 8.]

Reviser's note: This section was amended by 1991 c 3 § 339 and by 1991 1st sp.s. c 4 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Sunset Act application: See note following chapter digest.

Effective date—1991 1st sp.s. c 4: See note following RCW 70.47.030.

70.47.110 Enrollment of medical assistance recipients. The department of social and health services may make payments to the administrator or to participating managed health care systems on behalf of any enrollee who is a recipient of medical care under chapter 74.09 RCW, at the maximum rate allowable for federal matching purposes under Title XIX of the social security act. Any enrollee on whose behalf the department of social and health services makes such payments may continue as an enrollee, making premium payments based on the enrollee's own income as determined under the sliding scale, after eligibility for coverage under chapter 74.09 RCW has ended, as long as the enrollee remains eligible under this chapter. Nothing in this section affects the right of any person eligible for coverage under chapter 74.09 RCW to receive the services offered to other persons under that chapter but not included in the schedule of basic health care services covered by the plan. The administrator shall seek to determine which enrollees or prospective enrollees may be eligible for medical care under chapter 74.09 RCW and may require these individuals to complete the eligibility determination process under chapter 74.09 RCW prior to enrollment or continued participation in the plan. The administrator and the department of social and health services shall cooperatively adopt procedures to facilitate the transition of plan enrollees and payments on their behalf between the plan and the programs established under chapter 74.09 RCW. [1991 1st sp.s. c 4 § 3; 1987 1st ex.s. c 5 § 13.]

Sunset Act application: See note following chapter digest.

Effective date—1991 1st sp.s. c 4: See note following RCW 70.47.030.

70.47.115 Enrollment of dislocated forest products workers. (1) The administrator, when specific funding is provided and where feasible, shall make the basic health plan available to dislocated forest products workers and their families in timber impact areas. The administrator shall prioritize making the plan available under this section to the timber impact areas meeting the following criteria, as determined by the employment security department: (a) A lumber and wood products employment location quotient at or above the state average; (b) a direct lumber and wood products job loss of one hundred positions or more; and (c) an annual unemployment rate twenty percent above the state average.

(2) Dislocated forest products workers assisted under this section shall meet the requirements of enrollee as defined in RCW 70.47.020(4).

(3) For purposes of this section, (a) "dislocated forest products worker" means a forest products worker who:

(i)(A) Has been terminated or received notice of termination from employment and is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for his or her skills in that occupation or industry; or (B) is self-employed and has been displaced from his or her business because of the diminishing demand for the business's services or goods; and (ii) at the time of last separation from employment, resided in or was employed in a timber impact area; (b) "forest products worker" means a worker in the forest products industries affected by the reduction of forest fiber enhancement, transportation, or production. The workers included within this definition shall be determined by the employment security department, but shall include workers employed in the industries assigned the major group standard industrial classification codes "24" and "26" and the industries involved in the harvesting and management of logs, transportation of logs and wood products, processing of wood products, and the manufacturing and distribution of wood processing and logging equipment. The commissioner may adopt rules further interpreting these definitions. For the purposes of this subsection, "standard industrial classification code" means the code identified in RCW 50.29.025(6)(c); and (c) "timber impact area" means a county having a population of less than five hundred thousand, or a city or town located within a county having a population of less than five hundred thousand, and meeting two of the following three criteria, as determined by the employment security department, for the most recent year such data is available: (i) A lumber and wood products employment location quotient at or above the state average; (ii) projected or actual direct lumber and wood products job losses of one hundred positions or more, except counties having a population greater than two hundred thousand but less than five hundred thousand must have direct lumber and wood products job losses of one thousand positions or more; or (iii) an annual unemployment rate twenty percent or more above the state average. [1991 c 315 § 22.]

Intent—1991 c 315: See note following RCW 50.12.270.

Severability—**Conflict with federal requirements**—**Effective date**—1991 c 315: See RCW 50.70.900 through 50.70.902.

70.47.150 Public disclosure. Notwithstanding the provisions of chapter 42.17 RCW, (1) records obtained, reviewed by, or on file with the plan containing information concerning medical treatment of individuals shall be exempt from public inspection and copying; and (2) actuarial formulas, statistics, and assumptions submitted in support of a rate filing by a managed health care system or submitted to the administrator upon his or her request shall be exempt from public inspection and copying in order to preserve trade secrets or prevent unfair competition. [1990 c 54 § 1.]

Chapter 70.48

CITY AND COUNTY JAILS ACT

Sections

70.48.100	Jail register, open to the public—Records confidential—Exception.
70.48.120	Repealed.
70.48.210	Farms, camps, work release programs, and special detention facilities.
70.48.470	Registration of sex offenders—Notice to inmates convicted of sex offenses.

70.48.100 Jail register, open to the public—Records confidential—Exception. (1) A department of corrections or chief law enforcement officer responsible for the operation of a jail shall maintain a jail register, open to the public, into which shall be entered in a timely basis:

(a) The name of each person confined in the jail with the hour, date and cause of the confinement; and

(b) The hour, date and manner of each person's discharge.

(2) Except as provided in subsection (3) of this section the records of a person confined in jail shall be held in confidence and shall be made available only to criminal justice agencies as defined in RCW 43.43.705; or

(a) For use in inspections made pursuant to *RCW 70.48.070;

(b) In jail certification proceedings;

(c) For use in court proceedings upon the written order of the court in which the proceedings are conducted; or

(d) Upon the written permission of the person.

(3) (a) Law enforcement may use booking photographs of a person arrested or confined in a local or state penal institution to assist them in conducting investigations of crimes.

(b) Photographs and information concerning a person convicted of a sex offense as defined in RCW 9A.44.030 may be disseminated as provided in RCW 4.24.550, 9A.44.130, 9A.44.140, 10.01.200, 43.43.540, 43.43.745, 46.20.187, 70.48.470, 72.09.330, and **section 401, chapter 3, Laws of 1990. [1990 c 3 § 130; 1977 ex.s. c 316 § 10.]

Reviser's note: *(1) RCW 70.48.070 was repealed by 1987 c 462 § 23, effective January 1, 1988.

***(2) 1990 c 3 § 401 appears as a note following RCW 9A.44.130.

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

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.120 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

70.48.210 Farms, camps, work release programs, and special detention facilities. (1) All cities and counties are authorized to establish and maintain farms, camps, and work release programs and facilities, as well as special detention facilities. The facilities shall meet the requirements of chapter 70.48 RCW and any rules adopted thereunder.

(2) Farms and camps may be established either inside or outside the territorial limits of a city or county. A sentence of confinement in a city or county jail may include placement in a farm or camp. Unless directed otherwise by court order, the chief law enforcement officer or department of corrections, may transfer the prisoner to a farm or camp. The sentencing court, chief law enforcement officer, or department of corrections may not transfer to a farm or camp a greater number of prisoners than can be furnished with constructive employment and can be reasonably accommodated.

(3) The city or county may establish a city or county work release program and housing facilities for the prisoners in the program. In such regard, factors such as employment conditions and the condition of jail facilities should be considered. When a work release program is established the following provisions apply:

(a) A person convicted of a felony and placed in a city or county jail is eligible for the work release program. A person sentenced to a city or county jail is eligible for the work release program. The program may be used as a condition of probation for a criminal offense. Good conduct is a condition of participation in the program.

(b) The court may permit a person who is currently, regularly employed to continue his or her employment. The chief law enforcement officer or department of corrections shall make all necessary arrangements if possible. The court may authorize the person to seek suitable employment and may authorize the chief law enforcement officer or department of corrections to make reasonable efforts to find suitable employment for the person. A person participating in the work release program may not work in an establishment where there is a labor dispute.

(c) The work release prisoner shall be confined in a work release facility or jail unless authorized to be absent from the facility for program-related purposes, unless the court directs otherwise.

(d) Each work release prisoner's earnings may be collected by the chief law enforcement officer or a designee. The chief law enforcement officer or a designee may deduct from the earnings moneys for the payments for the prisoner's board, personal expenses inside and outside the jail, a share of the administrative expenses of this section, court-ordered victim compensation, and court-ordered restitution. Support payments for the prisoner's dependents, if any, shall be made as directed by the court. With the prisoner's consent, the remaining funds may be used to pay the prisoner's preexisting debts. Any remaining balance shall be returned to the prisoner.

(e) The prisoner's sentence may be reduced by earned early release time in accordance with procedures that shall be developed and promulgated by the work release facility. The earned early release time shall be for good behavior and good performance as determined by the facility. The facility shall not credit the offender with earned early release credits in advance of the offender actually earning the credits. In the case of an offender convicted of a serious violent offense or a sex offense that is a class A felony committed on or after July 1,

1990, the aggregate earned early release time may not exceed fifteen percent of the sentence. In no other case may the aggregate earned early release time exceed one-third of the total sentence.

(f) If the work release prisoner violates the conditions of custody or employment, the prisoner shall be returned to the sentencing court. The sentencing court may require the prisoner to spend the remainder of the sentence in actual confinement and may cancel any earned reduction of the sentence.

(4) A special detention facility may be operated by a noncorrectional agency or by noncorrectional personnel by contract with the governing unit. The employees shall meet the standards of training and education established by the criminal justice training commission as authorized by RCW 43.101.080. The special detention facility may use combinations of features including, but not limited to, low-security or honor prisoner status, work farm, work release, community review, prisoner facility maintenance and food preparation, training programs, or alcohol or drug rehabilitation programs. Special detention facilities may establish a reasonable fee schedule to cover the cost of facility housing and programs. The schedule shall be on a sliding basis that reflects the person's ability to pay. [1990 c 3 § 203; 1989 c 248 § 3; 1985 c 298 § 1; 1983 c 165 § 39; 1979 ex.s. c 232 § 17.]

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

Application—1989 c 248: See note following RCW 9.92.151.

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

70.48.470 Registration of sex offenders—Notice to inmates convicted of sex offenses. A person having charge of a jail shall notify in writing any confined person who is in the custody of the jail for a conviction of a sexual offense as defined in RCW 9.94A.030 of the registration requirements of RCW 9A.44.130 at the time of the inmate's release from confinement, and shall obtain written acknowledgment of such notification. [1990 c 3 § 406.]

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

Sex offense defined: RCW 9A.44.130.

Chapter 70.50 STATE OTOLOGIST

Sections

70.50.010 Appointment—Salary.

70.50.010 Appointment—Salary. The secretary 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 secretary. [1991 c 3 § 340; 1979 c 141 § 108; 1945 c 23 § 1; Rem. Supp. 1945 § 6010–10.]

Chapter 70.54
MISCELLANEOUS HEALTH AND SAFETY
PROVISIONS

Sections

70.54.040	Secretary to advise local authorities on sanitation.
70.54.110	New housing for agricultural workers to comply with board of health regulations.
70.54.180	Deaf persons access to emergency services—Telecommunication devices.
70.54.230	Cancer registry program.
70.54.240	Cancer registry program—Reporting requirements.
70.54.250	Confidentiality.
70.54.260	Liability.
70.54.270	Rule making.

70.54.040 Secretary to advise local authorities on sanitation. The commissioners of any county or the mayor of any city may call upon the secretary 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 secretary shall either personally or by an assistant make a careful examination into the conditions existing and shall make a full report containing his or her advice to the county or city making such request. [1991 c 3 § 341; 1979 c 141 § 109; 1909 c 208 § 3; RRS § 6006.]

70.54.110 New housing for agricultural workers to comply with board of health regulations. The state board of health shall develop rules for labor camps, which shall include as a minimum the standards developed under the Washington industrial safety and health act in chapter 49.17 RCW as relates to sanitation and temporary labor camps.

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. [1990 c 253 § 4; 1969 ex.s. c 231 § 1.]

Legislative finding and purpose—1990 c 253: See note following RCW 43.70.330.

70.54.180 Deaf persons access to emergency services—Telecommunication devices. (1) For the purpose of this section "telecommunication device" means an instrument for telecommunication in which speaking or hearing is not required for communicators.

(2) The county legislative authority of each county with a population of eighteen thousand or more and the governing body of each city with a population in excess of ten thousand shall provide by July 1, 1980, for a telecommunication device in their jurisdiction or through a central dispatch office that will assure access to police, fire, or other emergency services.

(3) The county legislative authority of each county with a population of eighteen thousand or less shall by July 1, 1980, make a determination of whether sufficient

need exists with their respective counties to require installation of a telecommunication device. Reconsideration of such determination will be made at any future date when a deaf individual indicates a need for such an instrument. [1991 c 363 § 142; 1979 ex.s. c 63 § 2.]

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

Purpose—1979 ex.s. c 63: "The legislature finds that many citizens of this state who are unable to utilize telephone services in a regular manner due to hearing defects are able to communicate by teletypewriters where hearing is not required for communication. Hence, it is the purpose of section 2 of this act [RCW 70.54.180] to require that telecommunication devices for the deaf be installed." [1979 ex.s. c 63 § 1.]

70.54.230 Cancer registry program. The secretary of health may contract with either a recognized regional cancer research institution or regional tumor registry, or both, which shall hereinafter be called the contractor, to establish a state-wide cancer registry program and to obtain cancer reports from all or a portion of the state as required in RCW 70.54.240 and to make available data for use in cancer research and for purposes of improving the public health. [1990 c 280 § 2.]

Intent—1990 c 280: "It is the intent of the legislature to establish a system to accurately monitor the incidence of cancer in the state of Washington for the purposes of understanding, controlling, and reducing the occurrence of cancer in this state. In order to accomplish this, the legislature has determined that cancer cases shall be reported to the department of health, and that there shall be established a state-wide population-based cancer registry." [1990 c 280 § 1.]

70.54.240 Cancer registry program—Reporting requirements. (1) The department of health shall adopt rules as to which types of cancer shall be reported, who shall report, and the form and timing of the reports.

(2) Every health care facility and independent clinical laboratory, and those physicians or others providing health care who diagnose or treat any patient with cancer who is not hospitalized within one month of diagnosis, will provide the contractor with the information required under subsection (1) of this section. The required information may be collected on a regional basis where such a system exists and forwarded to the contractor in a form suitable for the purposes of RCW 70.54.230 through 70.54.270. Such reporting arrangements shall be reduced to a written agreement between the contractor and any regional reporting agency which shall detail the manner, form, and timeliness of the reporting. [1990 c 280 § 3.]

Intent—1990 c 280: See note following RCW 70.54.230.

70.54.250 Confidentiality. (1) Data obtained under RCW 70.54.240 shall be used for statistical, scientific, medical research, and public health purposes only.

(2) The department and its contractor shall ensure that access to data contained in the registry is consistent with federal law for the protection of human subjects and consistent with chapter 42.48 RCW. [1990 c 280 § 4.]

Intent—1990 c 280: See note following RCW 70.54.230.

70.54.260 Liability. Providing information required under RCW 70.54.240 or 70.54.250 shall not create any liability on the part of the provider nor shall it constitute a breach of confidentiality. The contractor shall, at the request of the provider, but not more frequently than once a year, sign an oath of confidentiality, which reads substantially as follows:

"As a condition of conducting research concerning persons who have received services from (name of the health care provider or facility), I -----, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such research that could lead to identification of such persons receiving services, or to the identification of their health care providers. I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law."

[1990 c 280 § 5.]

Intent—1990 c 280: See note following RCW 70.54.230.

70.54.270 Rule making. The department shall adopt rules to implement RCW 70.54.230 through 70.54.260, including but not limited to a definition of cancer. [1990 c 280 § 6.]

Intent—1990 c 280: See note following RCW 70.54.230.

Chapter 70.58 VITAL STATISTICS

Sections

70.58.005	Definitions.
70.58.030	Duties of local registrars.
70.58.055	Certificates generally.
70.58.061	Electronic and hard copy transmission.
70.58.065	Local registrar use of electronic data bases.
70.58.104	Reproductions of vital records—Disclosure of information for research purposes—Furnishing of birth and death records by local registrars.
70.58.107	Fees charged by department and local registrars.
70.58.200	Repealed.
70.58.310	Registry for handicapped children—To be established and maintained.
70.58.320	Registry for handicapped children—Reports by physician of sentinel defects or disabling conditions—Reports by persons filling out birth certificate.
70.58.340	Registry for handicapped children—Cooperation with private or public organizations or agencies—Contributions.

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

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

(2) "Vital records" means records of birth, death, fetal death, marriage, dissolution, annulment, and legal separation, as maintained under the supervision of the state registrar of vital statistics. [1991 c 3 § 342; 1987 c 223 § 1.]

[1990-91 RCW Supp—page 1422]

70.58.030 Duties of local registrars. The local registrar shall supply blank forms of certificates to such persons as require them. He or she 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, the local registrar 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 or she shall issue a burial-transit permit to the funeral director or person acting as such. If a certificate of a birth is incomplete, he or she shall immediately notify the informant, and require that the missing items be supplied if they can be obtained. He or she shall sign as local registrar to each certificate filed in attest of the date of filing in the office. He or she shall make a record of each birth, death, and fetal death certificate registered in such manner as directed by the state registrar. The local registrar shall transmit to the state registrar each original death or fetal death certificate no less than thirty days after the certificate was registered nor more than sixty days after the certificate was registered. On or before the fifteenth day and the last day of each month, each local registrar shall transmit to the state registrar all original birth certificates that were registered prior to that day and which had not been transmitted previously. A local registrar shall transmit an original certificate to the state registrar whenever the state registrar requests the transfer of the certificate from the local registrar. If no births or no deaths occurred in any month, he or she shall, on the tenth day of the following month, report that fact to the state registrar, on a card provided for this purpose. Local registrars in counties in which a first class city or a city of twenty-seven thousand or more population is located may retain an exact copy of the original and make certified copies of the exact copy. [1990 c 99 § 1; 1961 ex.s. c 5 § 6; 1907 c 83 § 18; RRS § 6035.]

70.58.055 Certificates generally. (1) To promote and maintain nation-wide uniformity in the system of vital statistics, the certificates required by this chapter or by the rules adopted under this chapter shall include, as a minimum, the items recommended by the federal agency responsible for national vital statistics.

(2) The state board of health by rule 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 the court. The state board of health may eliminate from the forms items that it determines are not necessary for statistical study.

(3) Each certificate or other document required by this chapter shall be on a form or in a format prescribed by the state registrar.

(4) All vital records shall contain the data required for registration. No certificate may be held to be complete and correct that does not supply all items of information called for or that does not satisfactorily account for the omission of required items.

(5) Information required in certificates or documents authorized by this chapter may be filed and registered by photographic, electronic, or other means as prescribed by the state registrar. [1991 c 96 § 1.]

70.58.061 Electronic and hard copy transmission. The department is authorized to prescribe by rule the schedule and system for electronic and hard copy transmission of certificates and documents required by this chapter. [1991 c 96 § 2.]

70.58.065 Local registrar use of electronic data bases. The department, in mutual agreement with a local health officer as defined in RCW 70.05.010, may authorize a local registrar to access the state-wide birth data base or death data base and to issue a certified copy of birth or death certificates from the respective state-wide electronic data bases. In such cases, the department may bill local registrars for only direct line charges associated with accessing birth and death data bases. [1991 c 96 § 3.]

70.58.104 Reproductions of vital records—Disclosure of information for research purposes—Furnishing of birth and death records by local registrars. (1) The state registrar may prepare typewritten, photographic, electronic, or other reproductions of records of birth, death, fetal death, marriage, or decrees of divorce, annulment, or legal separation registered under law or that portion of the record of any birth which shows the child's full name, sex, date of birth, and date of filing of the certificate. Such reproductions, when certified by the state registrar, shall be considered for all purposes the same as the original and shall be prima facie evidence of the facts stated therein.

(2) The department may authorize by regulation the disclosure of information contained in vital records for research purposes. All research proposals must be submitted to the department and must be reviewed and approved as to scientific merit and to ensure that confidentiality safeguards are provided in accordance with department policy.

(3) Local registrars may, upon request, furnish certified copies of the records of birth, death, and fetal death, subject to all provisions of state law applicable to the state registrar. [1991 c 96 § 4; 1987 c 223 § 2.]

70.58.107 Fees charged by department and local registrars. The department of health shall charge a fee of eleven dollars for certified copies of records and for copies or information provided for research, statistical, or administrative purposes, and eight dollars for a search of the files or records when no copy is made. The department shall prescribe by regulation fees to be paid for preparing sealed files and for opening sealed files.

No fee may be demanded or required for furnishing certified copies of a birth, death, fetal death, marriage, divorce, annulment, or legal separation record for use in connection with a claim for compensation or pension pending before the veterans administration.

The department shall keep a true and correct account of all fees received and turn the fees over to the state treasurer on a weekly basis.

Local registrars shall charge the same fees as the state as hereinabove provided and as prescribed by department regulation, except that local registrars shall charge eleven dollars for the first copy of a death certificate and six dollars for each additional copy of the same death certificate when the additional copies are ordered at the same time as the first copy. All such fees collected, except for three dollars of each fee for the issuance of a certified copy, shall be paid to the jurisdictional health department.

All local registrars in cities and counties shall keep a true and correct account of all fees received under this section for the issuance of certified copies and shall turn three dollars of the fee over to the state treasurer on or before the first day of January, April, July, and October.

Three dollars of each fee imposed for the issuance of certified copies, except for copies suitable for display issued under RCW 70.58.085, at both the state and local levels shall be held by the state treasurer in the death investigations account established by RCW 43.79.445. [1991 c 3 § 343; 1988 c 40 § 1; 1987 c 223 § 3.]

70.58.200 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

70.58.310 Registry for handicapped children—To be established and maintained. The secretary of health shall establish and maintain a registry for handicapped children. [1991 c 3 § 344; 1979 c 141 § 110; 1959 c 177 § 2.]

70.58.320 Registry for handicapped children—Reports by physician of sentinel defects or disabling conditions—Reports by persons filling out birth certificate. Whenever the attending physician discovers that a newborn child has a sentinel 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 and to the parents, or legal guardians of the child, upon a form to be provided by the secretary 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 secretary. Sentinel 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. If a child with sentinel birth defects is born outside the hospital, the person filling out the birth certificate shall make a report to the department.

The forms to be provided by the secretary for this purpose shall require such information as the secretary deems necessary to carry out the purpose of RCW 70.58.300 through 70.58.350. [1991 c 3 § 345; 1984 c 156 § 1; 1979 c 141 § 111; 1959 c 177 § 3.]

70.58.340 Registry for handicapped children—Cooperation with private or public organizations or agencies—Contributions. The secretary 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 secretary 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. [1991 c 3 § 346; 1979 c 141 § 112; 1959 c 177 § 5.]

Chapter 70.62

TRANSIENT ACCOMMODATIONS—LICENSING—INSPECTIONS

Sections

70.62.210 Definitions.

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 health 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 health.

(6) The term "lodging unit" shall mean one self-contained unit designated by number, letter or some other method of identification. [1991 c 3 § 347; 1971 ex.s. c 239 § 2.]

Chapter 70.77

STATE FIREWORKS LAW

Sections

70.77.325 Annual application for a license—Dates.
70.77.343 License fees—Additional.
70.77.345 Duration of licenses.

70.77.325 Annual application for a license—Dates.

(1) Application for a license shall be made annually by every person holding an existing license who wishes to continue the activity requiring the license. The application shall be accompanied by the annual license fees as prescribed in RCW 70.77.343 and 70.77.340.

(2) A person applying for an annual license as a retailer under this chapter shall file an application by June 10 of the current year. The director of community development, through the director of fire protection, shall grant or deny the license within fifteen days of receipt of the application.

(3) A person applying for an annual license as a manufacturer, importer, or wholesaler under this chapter shall file an application by January 31 of the current year. The director of community development, through the director of fire protection, shall grant or deny the license within ninety days of receipt of the application. [1991 c 135 § 4; 1986 c 266 § 103; 1984 c 249 § 20; 1982 c 230 § 21; 1961 c 228 § 42.]

Intent—Effective date—Severability—1991 c 135: See notes following RCW 43.63A.375.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.343 License fees—Additional. [(1)] License fees, in addition to the fees in RCW 70.77.340, shall be charged as follows:

Manufacturer	\$1,500.00
Importer	900.00
Wholesaler	1,000.00
Retailer (for each separate outlet)	30.00
Public display for special fireworks	40.00
Pyrotechnic operator for special fireworks	5.00

(2) All receipts from the license fees in this section shall be placed in the fire services trust fund. [1991 c 135 § 6.]

Intent—Effective date—Severability—1991 c 135: See notes following RCW 43.63A.375.

70.77.345 Duration of licenses. The license fees shall be for the calendar year from January 1st to December 31st or for the remaining portion thereof. [1991 c 135 § 5; 1982 c 230 § 25; 1961 c 228 § 46.]

Intent—Effective date—Severability—1991 c 135: See notes following RCW 43.63A.375.

Chapter 70.83

PHENYLKETONURIA AND OTHER PREVENTABLE HERITABLE DISORDERS

Sections

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.

70.83.020 Screening tests of newborn infants. It shall be the duty of the department of health 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. [1991 c 3 § 348; 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 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. [1991 c 3 § 349; 1979 c 141 § 113; 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 department, and other state and local agencies cooperating with the department 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. [1991 c 3 § 350; 1979 c 141 § 114; 1967 c 82 § 4.]

**Chapter 70.83B
PRENATAL TESTING**

Sections
70.83B.020 Definitions.

70.83B.020 Definitions. Unless the context clearly requires otherwise the definitions in this section apply throughout this chapter.

- (1) "Department" means the department of health.
- (2) "Laboratory" means a private or public agency or organization performing prenatal tests for congenital and heritable disorders.
- (3) "Prenatal tests" means any test that predicts congenital or heritable disorders which: (a) As determined by the state board of health can by improper utilization clearly harm or endanger the health, safety, or welfare of the public, and the potential harm is easily recognizable and not remote or dependent upon tenuous argument, and (b) are enumerated by the department by rule.

(4) "Secretary" means the secretary of health. [1991 c 3 § 351; 1988 c 276 § 2.]

**Chapter 70.88
CONVEYANCES FOR PERSONS IN
RECREATIONAL ACTIVITIES**

Sections
70.88.070 Costs of inspection and plan review—Lien—Disposition of funds.
70.88.080 State immunity from liability—Actions deemed exercise of police power.
70.88.090 Rules and codes.

70.88.070 Costs of inspection and plan review—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 plan review for construction approval 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 and plan review for construction approval. 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. [1990 c 136 § 1; 1975 1st ex.s. c 74 § 1; 1961 c 253 § 2; 1959 c 327 § 7.]

Parks and parkways account abolished: RCW 43.79.405.

70.88.080 State immunity from liability—Actions deemed exercise of police power. Inspections, rules, and orders of the state parks and recreation commission resulting from the exercise of the provisions of this chapter and chapter 70.117 RCW shall not in any manner be deemed to impose liability upon the state for any injury or damage resulting from the operation or signing of the facilities regulated by this chapter, and all actions of the state parks and recreation commission and its personnel shall be deemed to be an exercise of the police power of the state. [1991 c 75 § 2; 1990 c 136 § 3; 1959 c 327 § 8.]

70.88.090 Rules and codes. The state parks and recreation commission is empowered to adopt reasonable rules and codes relating to public safety in the construction, operation, signing, and maintenance of the recreational devices provided for in this chapter. The rules and codes authorized hereunder shall be in accordance with established standards, if any, and shall not be discriminatory in their application. [1991 c 75 § 3; 1959 c 327 § 9.]

Chapter 70.90

WATER RECREATION FACILITIES

(Formerly: Swimming pools)

Sections

70.90.110	Definitions.
70.90.130	Expired.
70.90.210	Adjudicative proceeding—Notice.

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

(1) "Water recreation facility" means any artificial basin or other structure containing water used or intended to be used for recreation, bathing, relaxation, or swimming, where body contact with the water occurs or is intended to occur and includes auxiliary buildings and appurtenances. The term includes, but is not limited to:

(a) Conventional swimming pools, wading pools, and spray pools;

(b) Recreational water contact facilities as defined in this chapter;

(c) Spa pools and tubs using hot water, cold water, mineral water, air induction, or hydrojets; and

(d) Any area designated for swimming in natural waters with artificial boundaries within the waters.

(2) "Recreational water contact facility" means an artificial water associated facility with design and operational features that provide patron recreational activity which is different from that associated with a conventional swimming pool and purposefully involves immersion of the body partially or totally in the water, and that includes but is not limited to, water slides, wave pools, and water lagoons.

(3) "Local health officer" means the health officer of the city, county, or city-county department or district or a representative authorized by the local health officer.

(4) "Secretary" means the secretary of health.

(5) "Person" means an individual, firm, partnership, co-partnership, corporation, company, association, club, government entity, or organization of any kind.

(6) "Department" means the department of health.

(7) "Board" means the state board of health. [1991 c 3 § 352; 1987 c 222 § 2; 1986 c 236 § 2.]

70.90.130 Expired. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

70.90.210 Adjudicative proceeding—Notice. (1) Any person aggrieved by an order of the department or by the imposition of a civil fine by the department has the right to an adjudicative proceeding. RCW 43.70.095 governs department notice of a civil fine and a person's right to an adjudicative proceeding.

(2) Any person aggrieved by an order of a local health officer or by the imposition of a civil fine by the officer has the right to appeal. The hearing is governed by the local health jurisdiction's administrative appeals process. Notice shall be provided by the local health jurisdiction consistent with its due process requirements. [1991 c 3 § 354; 1989 c 175 § 130; 1986 c 236 § 12.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Chapter 70.93

MODEL LITTER CONTROL AND RECYCLING ACT

Sections

70.93.020	Declaration of purpose.
70.93.030	Definitions.
70.93.095	Marinas and airports—Recycling.
70.93.180	Litter control account—Composition.
70.93.250	Community service litter cleanup programs—Grants.

Local adopt-a-highway programs: RCW 47.40.105.

70.93.020 Declaration of purpose. The purpose of this chapter is to accomplish litter control and stimulate private recycling programs throughout this state by delegating to the department of ecology the authority to:

(1) Conduct a permanent and continuous program to control and remove litter from this state to the maximum practical extent possible;

(2) Recover and recycle waste materials related to litter and littering;

(3) Foster private recycling and markets for recyclable materials; and

(4) Increase public awareness of the need for recycling and litter control.

It is further the intent and purpose of this chapter to create jobs for employment of youth in litter cleanup and related activities and to stimulate and encourage small, private recycling centers. 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 recycling and litter control and removal efforts and not terminate or supplant such efforts. [1991 c 319 § 101; 1979 c 94 § 2; 1975-'76 2nd ex.s. c 41 § 7; 1971 ex.s. c 307 § 2.]

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

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 political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or other entity whatsoever;

(8) "Recycling" means transforming or remanufacturing waste materials into a finished product for use other than landfill disposal or incineration;

(9) "Recycling center" means a central collection point for recyclable materials;

(10) "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;

(11) "Watercraft" means any boat, ship, vessel, barge, or other floating craft;

(12) "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. [1991 c 319 § 102; 1979 c 94 § 3; 1971 ex.s. c 307 § 3.]

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

70.93.095 Marinas and airports—Recycling. (1) Each marina with thirty or more slips and each airport providing regularly scheduled commercial passenger service shall provide adequate recycling receptacles on, or adjacent to, its facility. The receptacles shall be clearly marked for the disposal of at least two of the following recyclable materials: Aluminum, glass, newspaper, plastic, and tin.

(2) Marinas and airports subject to this section shall not be required to provide recycling receptacles until the city or county in which it is located adopts a waste reduction and recycling element of a solid waste management plan pursuant to RCW 70.95.090. [1991 c 11 § 2.]

70.93.180 Litter control account—Composition. There is hereby created an account within the state treasury 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 except as required to be otherwise distributed under RCW 70.93.070. [1991 1st sp.s. c 13 § 40; 1985 c 57 § 68; 1983 c 277 § 3; 1971 ex.s. c 307 § 18.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Effective date—1985 c 57: See note following RCW 15.52.320.

70.93.250 Community service litter cleanup programs—Grants. The department shall provide grants to local units of government to establish, conduct, and evaluate community service programs for litter cleanup. Programs eligible for grants under this section shall include, but not be limited to, programs established pursuant to RCW 72.09.260. The department shall report to the appropriate standing committees of the legislature by December 31, 1991, on the effectiveness of community service litter cleanup programs funded from grants under this section. [1990 c 66 § 3.]

Findings—Intent—1990 c 66: See note following RCW 72.09.260.

Chapter 70.94

WASHINGTON CLEAN AIR ACT

Sections	
70.94.011	Declaration of public policies and purpose.
70.94.015	Air pollution control account—Air operating permit account.
70.94.030	Definitions.
70.94.035	Technical assistance program for regulated community.
70.94.037	Transportation activities—"Conformity" determination requirements.
70.94.039	Science advisory board—Risks of air contaminant emissions.
70.94.041	Exception—Burning wood at historic structure.
70.94.053	Air pollution control authorities created—Activated authorities, composition, meetings—Delineation of air pollution regions, considerations (as amended by 1991 c 125).
70.94.053	Air pollution control authorities created—Activated authorities, composition, meetings—Delineation of air pollution regions, considerations (as amended by 1991 c 199).
70.94.053	Air pollution control authorities created—Activated authorities, composition, meetings—Delineation of air pollution regions, considerations (as amended by 1991 c 363).
70.94.055	Air pollution control authority may be activated by counties, when (as amended by 1991 c 199).
70.94.055	Air pollution control authority may be activated by certain counties, when (as amended by 1991 c 363).
70.94.092	Air pollution control authority—Fiscal year—Adoption of budget—Contents.
70.94.0935	Repealed.
70.94.100	Air pollution control authority—Board of directors—Composition—Term.
70.94.130	Air pollution control authority—Board of directors—Powers, quorum, officers, compensation.
70.94.141	Air pollution control authority—Powers and duties of activated authority.
70.94.152	Notice may be required of construction of proposed new contaminant source—Submission of plans—Approval, disapproval—Emission control.
70.94.153	Existing stationary source—Replacement or substantial alteration of emission control technology.
70.94.155	Control of emissions—Bubble concept—Schedules of compliance.
70.94.157	Preemption of uniform building and fire codes.
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70.94.163	Source categories not required to have a permit—Recommendations.
70.94.170	Air pollution control authority control officer.
70.94.181	Variances—Application for—Considerations—Limitations—Renewals—Review.
70.94.205	Confidentiality of records and information.

- 70.94.211 Enforcement actions by air authority—Notice to violators.
- 70.94.231 Air pollution control authority—Dissolution of prior districts—Continuation of rules and regulations until superseded.
- 70.94.232 Repealed.
- 70.94.240 Air pollution control advisory council.
- 70.94.262 Withdrawal from multicounty authority.
- 70.94.331 Powers and duties of department.
- 70.94.332 Enforcement actions by department—Notice to violators.
- 70.94.385 State financial aid—Application for—Requirements.
- 70.94.395 Air contaminant sources—Regulation by department; authorities may be more stringent—Hearing—Standards.
- 70.94.405 Air pollution control authority—Review by department of program.
- 70.94.410 Air pollution control authority—Assumption of control by department.
- 70.94.420 State departments and agencies to cooperate with department and authorities.
- 70.94.430 Penalties.
- 70.94.431 Civil penalties—Excusable excess emissions.
- 70.94.455 Residential and commercial construction—Burning and heating device standards.
- 70.94.457 Solid fuel burning devices—Emission performance standards.
- 70.94.470 Residential solid fuel burning devices—Opacity levels—Enforcement and public education.
- 70.94.473 Limitations on burning wood for heat.
- 70.94.475 Liability of condominium owners' association or resident association.
- 70.94.477 Limitations on use of solid fuel burning devices.
- 70.94.480 Wood stove education program.
- 70.94.483 Wood stove education and enforcement account created—Fee imposed on wood stove sales. (Effective until January 1, 1992.)
- 70.94.483 Wood stove education and enforcement account created—Fee imposed on solid fuel burning device sales. (Effective January 1, 1992.)
- 70.94.521 Transportation demand management—Findings.
- 70.94.524 Transportation demand management—Definitions.
- 70.94.527 Transportation demand management—Requirements for counties and cities.
- 70.94.531 Transportation demand management—Requirements for employers.
- 70.94.534 Transportation demand management—Jurisdictions' review and penalties.
- 70.94.537 Transportation demand management—Commute trip reduction task force.
- 70.94.541 Transportation demand management—Technical assistance team.
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- 70.94.680 Repealed.
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- 70.94.715 Air pollution episodes—Episode avoidance plan—Contents—Source emission reduction plans—Authority—Considered orders.
- 70.94.740 Repealed.
- 70.94.743 Outdoor burning—Areas where prohibited—Silvicultural burning.
- 70.94.745 Limited outdoor burning—Program.
- 70.94.750 Limited outdoor burning—Permits issued by political subdivisions—Types of fires permitted.
- 70.94.775 Outdoor burning—Fires prohibited—Exceptions.
- 70.94.780 Outdoor burning—Permits issued by political subdivisions.
- 70.94.810 Repealed.
- 70.94.815 Repealed.
- 70.94.825 Repealed.
- 70.94.860 Department of ecology may accept delegation of programs.
- 70.94.870 Repealed.
- 70.94.875 Evaluation of information on acid deposition in Pacific Northwest—Establishment of critical levels—Notification of legislature.
- 70.94.904 Effective dates—1991 c 199.
- 70.94.905 Severability—1991 c 199.
- 70.94.906 Captions not law.
- 70.94.960 Clean fuel matching grants for public transit, vehicle mechanics, and refueling infrastructure.
- 70.94.970 Chlorofluorocarbons—Ozone—Refrigerants regulated. (Effective July 1, 1992.)
- 70.94.980 Refrigerants—Unlawful acts. (Effective July 1, 1992.)
- 70.94.990 Refrigerants—Rules—Enforcement provisions, limitations.

70.94.011 Declaration of public policies and purpose.

It is declared to be the public policy to preserve, protect, and enhance the air quality for current and future generations. Air is an essential resource that must be protected from harmful levels of pollution. Improving air quality is a matter of state-wide concern and is in the public interest. It is the intent of this chapter to secure and maintain levels of air quality that protect human health and safety, including the most sensitive members of the population, to comply with the requirements of the federal clean air act, to prevent injury to plant, animal life, and property, to foster the comfort and convenience of Washington's inhabitants, to promote the economic and social development of the state, and to facilitate the enjoyment of the natural attractions of the state.

It is further the intent of this chapter to protect the public welfare, to preserve visibility, to protect scenic, aesthetic, historic, and cultural values, and to prevent air pollution problems that interfere with the enjoyment of life, property, or natural attractions.

Because of the extent of the air pollution problem the legislature finds it necessary to return areas with poor air quality to levels adequate to protect health and the environment as expeditiously as possible but no later than December 31, 1995. Further, it is the intent of this chapter to prevent any areas of the state with acceptable

air quality from reaching air contaminant levels that are not protective of human health and the environment.

The legislature recognizes that air pollution control projects may affect other environmental media. In selecting air pollution control strategies state and local agencies shall support those strategies that lessen the negative environmental impact of the project on all environmental media, including air, water, and land.

The legislature further recognizes that energy efficiency and energy conservation can help to reduce air pollution and shall therefore be considered when making decisions on air pollution control strategies and projects.

It is the policy of the state that the costs of protecting the air resource and operating state and local air pollution control programs shall be shared as equitably as possible among all sources whose emissions cause air pollution.

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.

To these ends it is the purpose of this chapter to safeguard the public interest through an intensive, progressive, and coordinated state-wide program of air pollution prevention and control, to provide for an appropriate distribution of responsibilities, and to encourage coordination and cooperation between the state, regional, and local units of government, to improve cooperation between state and federal government, public and private organizations, and the concerned individual, as well as to provide for the use of all known, available, and reasonable methods to reduce, prevent, and control air pollution.

The legislature recognizes that the problems and effects of air pollution cross political boundaries, are frequently regional or interjurisdictional in nature, and are dependent upon the existence of human activity in areas having common topography and weather conditions conducive to the buildup of air contaminants. In addition, the legislature recognizes that air pollution levels are aggravated and compounded by increased population, and its consequences. These changes often result in increasingly serious problems for the public and the environment.

The legislature further recognizes that air emissions from thousands of small individual sources are major contributors to air pollution in many regions of the state. As the population of a region grows, small sources may contribute an increasing proportion of that region's total air emissions. It is declared to be the policy of the state to achieve significant reductions in emissions from those small sources whose aggregate emissions constitute a significant contribution to air pollution in a particular region.

It is the intent of the legislature that air pollution goals be incorporated in the missions and actions of state agencies. [1991 c 199 § 102; 1973 1st ex.s. c 193 § 1; 1969 ex.s. c 168 § 1; 1967 c 238 § 1.]

Finding—1991 c 199: "The legislature finds that ambient air pollution is the most serious environmental threat in Washington state.

Air pollution causes significant harm to human health; damages the environment, including trees, crops, and animals; causes deterioration of equipment and materials; contributes to water pollution; and degrades the quality of life.

Over three million residents of Washington state live where air pollution levels are considered unhealthful. Of all toxic chemicals released into the environment more than half enter our breathing air. Citizens of Washington state spend hundreds of millions of dollars annually to offset health, environmental, and material damage caused by air pollution. The legislature considers such air pollution levels, costs, and damages to be unacceptable.

It is the intent of this act that the implementation of programs and regulations to control air pollution shall be the primary responsibility of the department of ecology and local air pollution control authorities." [1991 c 199 § 101.]

Alternative fuel and solar powered vehicles—1991 c 199: "The department of ecology shall contract with Western Washington University for the biennium ending June 30, 1993, for research and development of alternative fuel and solar powered vehicles. A report on the progress of such research shall be presented to the standing environmental committees and the department by January 1, 1994." [1991 c 199 § 230.]

70.94.015 Air pollution control account—Air operating permit account. (1) The air pollution control account is established in the state treasury. All receipts from RCW 70.94.650, 70.94.660, 82.44.020(3), and 82.50.405 shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only to develop and implement the provisions of *this act and chapters 70.94 and 70.120 RCW.

(2) The amounts collected and allocated in accordance with this section shall be expended upon appropriation except as otherwise provided in this section and in accordance with the following limitations:

Portions of moneys received by the department of ecology from the air pollution control account shall be distributed by the department to local authorities based on:

(a) The level and extent of air quality problems within such authority's jurisdiction;

(b) The costs associated with implementing air pollution regulatory programs by such authority; and

(c) The amount of funding available to such authority from other sources, whether state, federal, or local, that could be used to implement such programs.

(3) The air operating permit account is created in the custody of the state treasurer. All receipts paid to the department of revenue under RCW 70.94.161 shall be deposited into the account. Expenditures from the account may be used only for the direct and indirect costs of implementing the air operating permit program under RCW 70.94.161. Only the director of the department of ecology or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but no appropriation is required for such expenditures. [1991 c 199 § 228.]

***Reviser's note:** For codification of "this act" [1991 c 199], see Codification Tables, Supplement Volume 9A.

Finding—1991 c 199: See note following RCW 70.94.011.

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. For the purpose of this chapter, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW.

(3) "Air quality standard" means an established concentration, exposure time, and frequency of occurrence of an air contaminant or multiple contaminants in the ambient air which shall not be exceeded.

(4) "Ambient air" means the surrounding outside air.

(5) "Authority" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(6) "Board" means the board of directors of an authority.

(7) "Control officer" means the air pollution control officer of any authority.

(8) "Department" means the department of ecology.

(9) "Emission" means a release of air contaminants into the ambient air.

(10) "Emission standard" means a limitation on the release of an air contaminant or multiple contaminants into the ambient air.

(11) "Multicounty authority" means an authority which consists of two or more counties.

(12) "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision of the state, municipality, or governmental agency.

(13) "Silvicultural burning" means burning of wood fiber on forest land consistent with the provisions of RCW 70.94.660. [1991 c 199 § 103; 1987 c 109 § 33; 1979 c 141 § 119; 1969 ex.s. c 168 § 2; 1967 ex.s. c 61 § 1; 1967 c 238 § 2; 1957 c 232 § 3.]

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.035 Technical assistance program for regulated community. The department shall establish a technical assistance unit within its air quality program, consistent with the federal clean air act, to provide the regulated community, especially small businesses with:

(1) Information on air pollution laws, rules, compliance methods, and technologies;

(2) Information on air pollution prevention methods and technologies, and prevention of accidental releases;

(3) Assistance in obtaining permits and developing emission reduction plans;

(4) Information on the health and environmental effects of air pollution.

No representatives of the department designated as part of the technical assistance unit created in this section may have any enforcement authority. Staff of the technical assistance unit who provide on-site consultation at an industrial or commercial facility and who observe violations of air quality rules shall immediately inform the owner or operator of the facility of such violations. On-site consultation visits shall not be regarded as an inspection or investigation and no notices or citations may be issued or civil penalties assessed during such a visit. However, violations shall be reported to the appropriate enforcement agency and the facility owner or operator shall be notified that the violations will be reported. No enforcement action shall be taken by the enforcement agency for violations reported by technical assistance unit staff unless and until the facility owner or operator has been provided reasonable time to correct the violation. Violations that place any person in imminent danger of death or substantial bodily harm or cause physical damage to the property of another in an amount exceeding one thousand dollars may result in immediate enforcement action by the appropriate enforcement agency. [1991 c 199 § 308.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.037 Transportation activities—"Conformity" determination requirements. In areas subject to a state implementation plan, no state agency, metropolitan planning organization, or local government shall approve or fund a transportation plan, program, or project within or that affects a nonattainment area unless a determination has been made that the plan, program, or project conforms with the state implementation plan for air quality as required by the federal clean air act.

Conformity determination shall be made by the state or local government or metropolitan planning organization administering or developing the plan, program, or project.

No later than eighteen months after May 15, 1991, the director of the department of ecology and the secretary of transportation, in consultation with other state, regional, and local agencies as appropriate, shall adopt by rule criteria and guidance for demonstrating and assuring conformity of plans, programs, and projects that are wholly or partially federally funded.

A project with a scope that is limited to preservation or maintenance, or both, shall be exempted from a conformity determination requirement. [1991 c 199 § 219.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.039 Science advisory board—Risks of air contaminant emissions. (1) The science advisory board is hereby created to advise the department on procedures for assessing and managing the risks associated with air contaminant emissions. The board shall consist of five members knowledgeable in the fields of risk assessment or risk management. Members shall be appointed by the director of the department. The board shall be staffed by the department.

(2) The board shall:

(a) Advise the department on the most appropriate methods for identifying and measuring cancer risks or other chronic health effects resulting from exposure to air contaminant emissions; and

(b) Identify, evaluate, and recommend procedures relating to managing the risks associated with exposure to air contaminant emissions.

(3) In fulfilling its duties under subsection (2) of this section, the board shall consider all appropriate studies and reports relating to risk assessment or risk management including but not limited to reports authorized by the federal clean air act from the national academy of sciences and the risk assessment and risk management commission.

(4) Members shall be compensated as provided in RCW 43.03.250 and shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The duties of the board shall terminate on July 1, 1996. [1991 c 199 § 314.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.041 Exception—Burning wood at historic structure. Except as otherwise provided in this section, any building or structure listed on the national register of historic sites, structures, or buildings established pursuant to 80 Stat. 915, 16 U.S.C. Sec. 470a, or on the state register established pursuant to RCW 27.34.220, shall be permitted to burn wood as it would have when it was a functioning facility as an authorized exception to the provisions of this chapter. Such burning of wood shall not be exempted from the provisions of RCW 70.94.710 through 70.94.730. [1991 c 199 § 506; 1983 c 3 § 175; 1977 ex.s. c 38 § 1.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.053 Air pollution control authorities created—Activated authorities, composition, meetings—Delineation of air pollution regions, considerations (as amended by 1991 c 125). (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) Except as provided in RCW 70.94.262, 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 or other officers 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 department is 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. [1991 c 125 § 1. Prior: 1987 c 505 § 60; 1987 c 109 § 34; 1979 c 141 § 120; 1967 c 238 § 4.]

Reviser's note: *(1) RCW 70.94.011 was amended by 1991 c 199 § 102. The reference to "two major areas" was deleted.

** (2) RCW 70.94.232 was repealed by 1991 c 199 § 718.

70.94.053 Air pollution control authorities created—Activated authorities, composition, meetings—Delineation of air pollution regions, considerations (as amended by 1991 c 199). (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 activated 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 or other officers 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 department is 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.) [1991 c 199 § 701. Prior: 1987 c 505 § 60; 1987 c 109 § 34; 1979 c 141 § 120; 1967 c 238 § 4.]

***Reviser's note:** RCW 70.94.232 was repealed by 1991 c 199 § 718.

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.053 Air pollution control authorities created—Activated authorities, composition, meetings—Delineation of air pollution regions, considerations (as amended by 1991 c 363). (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,~~) with populations of one hundred twenty-five thousand or more 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 members of county (~~commissioners~~) legislative authorities or other officers 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 department is 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. [1991 c 363 § 143. Prior: 1987 c 505 § 60; 1987 c 109 § 34; 1979 c 141 § 120; 1967 c 238 § 4.]

Reviser's note: (1) RCW 70.94.053 was amended three times during the 1991 legislative session, all without reference to the others. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

* (2) RCW 70.94.011 was amended by 1991 c 199 § 102. The reference to "two major areas" was deleted.

** (3) RCW 70.94.232 was repealed by 1991 c 199 § 718.

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

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.055 Air pollution control authority may be activated by counties, when (as amended by 1991 c 199). 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~~) may by resolution activate an air pollution control authority or combine with a contiguous county or counties to form a multicounty air pollution control authority. [1991 c 199 § 702; 1967 c 238 § 5.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.055 Air pollution control authority may be activated by certain counties, when (as amended by 1991 c 363). The (~~board of~~) county (~~commissioners~~) legislative authority of any county (~~other than a first class, class A or class AA county~~) with a population of less than one hundred twenty-five thousand 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~~) legislative authority 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~~) it 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. [1991 c 363 § 144; 1967 c 238 § 5.]

Reviser's note: RCW 70.94.055 was amended twice during the 1991 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

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

70.94.092 Air pollution control authority—Fiscal year—Adoption of budget—Contents. 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. On or before the fourth Monday in June of each year, each activated authority shall adopt a budget for the following fiscal year. The activated authority budget shall contain adequate funding and provide for staff sufficient to carry out the provisions of all applicable ordinances, resolutions, and local regulations related to the reduction, prevention, and control of air pollution. The

legislature acknowledges the need for the state to provide reasonable funding to local authorities to carry out the requirements of this chapter. 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. [1991 c 199 § 703; 1975 1st ex.s. c 106 § 1; 1969 ex.s. c 168 § 8; 1967 c 238 § 16.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.0935 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

70.94.100 Air pollution control authority—Board of directors—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, at least one of whom shall represent the city having the most population in the county, and two representatives to be designated by the board of county commissioners. In the case of an authority comprised of two, three, four, or five counties, the board shall be comprised of one appointee from each county, who shall represent the city having the most population in such county, to be designated by the mayor and city council of such city, and one representative 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 representative from each county to be designated by the board of county commissioners of each county making up the authority, and three appointees, one each from the three largest cities within the local authority's jurisdiction 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.

(4) The terms of office of board members shall be four years.

(5) Wherever a member of a board has a potential conflict of interest in an action before the board, the member shall declare to the board the nature of the potential conflict prior to participating in the action review. The board shall, if the potential conflict of interest, in the judgment of a majority of the board, may prevent the member from a fair and objective review of the case, remove the member from participation in the action.

[1991 c 199 § 704; 1989 c 150 § 1; 1969 ex.s. c 168 § 13; 1967 c 238 § 21; 1957 c 232 § 10.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.130 Air pollution control authority—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. The board shall meet at least ten times per year. All meetings shall be publicly announced prior to their occurrence. All meetings shall be open to the public. 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 chair 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 or her place with the same authority as the member when he or she is unable to attend. Each member of the board, or his or her representative, shall receive from the authority compensation consistent with such authority's rates (but not to exceed one thousand dollars per year) for time spent in the performance of duties under this chapter, plus the actual and necessary expenses incurred by the member in such performance. The board may appoint a control officer, and any other personnel, and shall determine their salaries, and pay same, together with any other proper indebtedness, from authority funds. [1991 c 199 § 705; 1969 ex.s. c 168 § 15; 1967 c 238 § 24; 1957 c 232 § 13.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.141 Air pollution control authority—Powers and duties 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 rules and regulations, implementing this chapter and consistent with it, after consideration at a public hearing held in accordance with chapter 42.30 RCW. Rules and regulations shall also be adopted in accordance with the notice and adoption procedures set forth in RCW 34.05.320, those provisions of RCW 34.05.325 that are not in conflict with chapter 42.30 RCW, and with the procedures of RCW 34.05.340, 34.05.355 through 34.05.380, and with chapter 34.08 RCW, except that rules shall not be published in the Washington Administrative Code. Judicial review of rules adopted by an authority shall be in accordance with Part V of chapter 34.05 RCW. An air pollution control authority shall not be deemed to be a state agency.

(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. [1991 c 199 § 706; 1970 ex.s. c 62 § 56; 1969 ex.s. c 168 § 16; 1967 c 238 § 25.]

Finding—1991 c 199: See note following RCW 70.94.011.

Savings—Effective date—Severability—1970 ex.s. c 62: See notes following RCW 43.21A.010.

70.94.152 Notice may be required of construction of proposed 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 establishment of any proposed new 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 or notice of construction application submitted to either the board or to the department of ecology shall preclude a further submittal of a duplicate application to any board or to the department of ecology. Within thirty days of receipt of a notice of construction application, the department of ecology or board may require, as a condition precedent to the establishment of the new source or sources covered thereby, the submission of plans, specifications, and such other information as it deems necessary to determine whether the proposed new source will be in accord with applicable rules and regulations in force under this chapter. If on the basis of plans, specifications, or other information required under this section the department of ecology or board determines that the proposed new source will not be in accord with this chapter or the applicable ordinances, resolutions, rules, and regulations adopted under this chapter, it shall issue an order denying permission to establish the new source. If on the basis of plans, specifications, or other information required under this section, the department of ecology or board determines that the proposed new source will be in accord with this chapter, and the applicable rules and regulations adopted under this chapter, it shall issue an order of approval for the establishment of the new source or sources, which order may provide such conditions as are reasonably necessary to assure the maintenance of compliance with this chapter and the applicable rules and regulations adopted under this chapter. Every order of approval under this chapter must be reviewed prior to issuance by a professional engineer or staff under the supervision of a professional engineer in the employ of the department of ecology or board.

(2) The determination required under subsection (1) of this section 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) New source review of a modification shall be limited to the emission unit or units proposed to be modified and the air contaminants whose emissions would increase as a result of the modification.

(4) 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.

(5) Any features, machines, and devices constituting parts of or called for by plans, specifications, or other information submitted pursuant to subsection (1) of this section shall be maintained and operate in good working order.

(6) 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 or her obligation to comply with applicable emission control requirements or with any other provision of law.

(7) Within thirty days of receipt of a notice of construction application the department of ecology or board

shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within sixty days of receipt of a complete application the department or board shall either (a) issue a final decision on the application, or (b) for those projects subject to public notice, initiate notice and comment on a proposed decision, followed as promptly as possible by a final decision. [1991 c 199 § 302; 1973 1st ex.s. c 193 § 2; 1969 ex.s. c 168 § 20; 1967 c 238 § 29.]

Finding—1991 c 199: See note following RCW 70.94.011.

Use of emission credits to be consistent with new source review program: RCW 70.94.850.

70.94.153 Existing stationary source—Replacement or substantial alteration of emission control technology. Any person proposing to replace or substantially alter the emission control technology installed on an existing stationary source emission unit shall file a notice of construction application with the jurisdictional permitting authority. For projects not otherwise reviewable under RCW 70.94.152, the permitting authority may (1) require that the owner or operator employ reasonably available control technology for the affected emission unit and (2) may prescribe reasonable operation and maintenance conditions for the control equipment. Within thirty days of receipt of an application for notice of construction under this section the permitting authority shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within thirty days of receipt of a complete application the permitting authority shall either issue an order of approval or a proposed RACT determination for the proposed project. Construction shall not commence on a project subject to review under this section until the permitting authority issues a final order of approval. However, any notice of construction application filed under this section shall be deemed to be approved without conditions if the permitting authority takes no action within thirty days of receipt of a complete application for a notice of construction. [1991 c 199 § 303.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.155 Control of emissions—Bubble concept—Schedules of compliance. (1) As used in subsection (3) of this section, the term "bubble" means an air pollution control system which permits aggregate measurements of allowable emissions, for a single category of pollutant, for emissions points from a specified emissions-generating facility or facilities. Individual point source emissions levels from such specified facility or facilities may be modified provided that the aggregate limit for the specified sources is not exceeded.

(2) 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 permit or 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.

(3) Wherever requirements necessary for the attainment of air quality standards or, where such standards are not exceeded, for the maintenance of air quality can be achieved through the use of a control program involving the bubble concept, such program may be authorized by a regulatory order or orders or permit issued to the air contaminant source or sources involved. Such order or permit shall only be authorized after the control program involving the bubble concept is accepted by [the] United States environmental protection agency as part of an approved state implementation plan. Any such order or permit provision shall restrict total emissions within the bubble to no more than would otherwise be allowed in the aggregate for all emitting processes covered. The orders or permits provided for by this subsection shall be issued by the department or the authority with jurisdiction. If the bubble involves interjurisdictional approval, concurrence in the total program must be secured from each regulatory entity concerned. [1991 c 199 § 305; 1981 c 224 § 1; 1973 1st ex.s. c 193 § 3.]

Finding—1991 c 199: See note following RCW 70.94.011.

Use of emission credits to be consistent with bubble program: RCW 70.94.850.

70.94.157 Preemption of uniform building and fire codes. The department and local air pollution control authorities shall preempt the application of chapter 9 of the uniform building code and article 80 of the uniform fire code by other state agencies and local governments for the purposes of controlling outdoor air pollution from industrial and commercial sources, except where authorized by *this act. Actions by other state agencies and local governments under article 80 of the uniform fire code to take immediate action in response to an emission that presents a physical hazard or imminent health hazard are not preempted. [1991 c 199 § 315.]

***Reviser's note:** For codification of "this act" [1991 c 199], see Codification Tables, Supplement Volume 9A.

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.161 Operating permits for air contaminant sources—Generally—Fees, report to legislature. The department of ecology, or board of an authority, shall require renewable permits for the operation of air contaminant sources subject to the following conditions and limitations:

(1) Unless a different meaning is plainly required by the context, the following words and phrases shall have the following meanings:

(a) "Lowest achievable emission rate" (LAER) means for any source that rate of emissions which reflects:

(i) The most stringent emission limitation that is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed new or modified source demonstrates that such limitations are not achievable; or

(ii) The most stringent emission limitation that is achieved in practice by such class or category of source, whichever is more stringent.

In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source performance standards.

(b) "Best available control technology" (BACT) means technology that will result in an emission limitation, including a visible emission standard, based on the maximum degree of reduction for each air pollutant subject to this regulation that would be emitted from any proposed new or modified source that the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such sources or modification through application of production processes, available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such air pollutant. In no event shall application of the best available technology result in emissions of any air pollutant that would exceed the emissions allowed by any applicable standard under 40 C.F.R. Part 60 and Part 61. If the reviewing agency determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice, or operational standard, or combination thereof, to meet the requirement of best available control technology. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice, or operation and shall provide for compliance by means that achieve equivalent results. The term "all known available and reasonable methods of emission control" is interpreted to mean the same as best available control technology.

(c) "Reasonably available control technology" (RACT) means the lowest emission limit that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any source or source category shall be adopted only after notice and opportunity for comment are afforded.

(d) "Source" means all of the emissions units including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are

under the control of the same person, or persons under common control, whose activities are ancillary to the production of a single product or functionally related group of products.

(e) "New source" means (i) the construction or modification of a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted, and (ii) any other project that constitutes a new source under the federal clean air act.

(f) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air contaminant.

(g) "Modification" means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted. The term modification shall be construed consistent with the definition of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

(2) Permits shall be issued for a term of five years. A permit may be modified or amended during its term at the request of the permittee, or for any reason allowed by the federal clean air act. The rules adopted pursuant to subsection (3) of this section shall include rules for permit amendments and modifications.

(3)(a) Rules establishing the elements for a state-wide operating permit program and the process for permit application and renewal consistent with federal requirements shall be established by the department by January 1, 1993. The rules shall provide that every proposed permit must be reviewed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority. The permit program established by these rules shall be administered by the department and delegated local air authorities. Rules developed under this subsection shall not preclude a delegated local air authority from including in a permit its own more stringent emission standards and operating restrictions.

(b) The board of any local air pollution control authority may apply to the department of ecology for a delegation order authorizing the local authority to administer the operating permit program for sources under that authority's jurisdiction. The department shall, by order, approve such delegation, if the department finds that the local authority has the technical and financial resources, to discharge the responsibilities of a permitting authority under the federal clean air act. A delegation request shall include adequate information about the local authority's resources to enable the department to make the findings required by this subsection; provided, any delegation order issued under this subsection shall take effect ninety days after the environmental protection agency authorizes the local authority to issue operating permits under the federal clean air act.

(c) Except for the authority granted the energy facility site evaluation council to issue permits for the new construction, reconstruction, or enlargement or operation of new energy facilities under chapter 80.50 RCW, the

department may exercise the authority, as delegated by the environmental protection agency, to administer Title IV of the federal clean air act as amended and to delegate such administration to local authorities as applicable pursuant to (b) of this subsection.

(4) "Best available control technology" (BACT) is required for new sources except where LAER is required.

Until July 1, 1993, "lowest achievable emission rate" (LAER) is required solely for those sources required by the federal clean air act. By December 1, 1992, the department shall recommend control technology requirements for new sources to the appropriate standing committees of the legislature.

Except as otherwise provided in RCW 70.94.331(9), "reasonably available control technology" (RACT) is required for existing sources.

In establishing technical standards, defined in *subsection (2) of this section, the permitting authority shall consider and, if found to be appropriate, give credit for waste reduction within the process.

(5) Operating permits shall apply to all sources (a) where required by the federal clean air act, and (b) for any source that may cause or contribute to air pollution in such quantity as to create a threat to the public health or welfare. Subsection (b) of this subsection is not intended to apply to small businesses except when both of the following limitations are satisfied: (i) The source is in an area exceeding or threatening to exceed federal or state air quality standards; and (ii) the department provides a reasonable justification that requiring a source to have a permit is necessary to meet a federal or state air quality standard, or to prevent exceeding a standard in an area threatening to exceed the standard. For purposes of this subsection "areas threatening to exceed air quality standards" shall mean areas projected by the department to exceed such standards within five years. Prior to identifying threatened areas the department shall hold a public hearing or hearings within the proposed areas.

(6) Sources operated by government agencies are not exempt under this section.

(7) By October 1, 1993, or ninety days after the United States environmental protection agency approves the state operating permit program, whichever is later, any person required to have a permit shall submit to the permitting agency a compliance plan and permit application, signed by a responsible official, certifying the accuracy of the information submitted. Until permits are issued, existing sources shall be allowed to operate under presently applicable standards and conditions provided that such sources submit complete and timely permit applications.

(8) All proposed permits shall be subject to public notice and comment. The rules adopted pursuant to subsection (3) of this section shall specify procedures for public notice and comment. Such procedures shall provide the permitting agency with an opportunity to respond to comments received from interested parties prior to the time that the proposed permit is submitted to the environmental protection agency for review pursuant to section 505(a) of the federal clean air act. In the event that the environmental protection agency objects to a

proposed permit pursuant to section 505(b) of the federal clean air act, the permitting authority shall not issue the permit, unless the permittee consents to the changes required by the environmental protection agency.

(9) The procedures contained in chapter 43.21B RCW shall apply to permit appeals. The pollution control hearings board may stay the effectiveness of any permit issued under this section during the pendency of an appeal filed by the permittee, if the permittee demonstrates that compliance with the permit during the pendency of the appeal would require significant expenditures that would not be necessary in the event that the permittee prevailed on the merits of the appeal.

(10) After the effective date of any permit program promulgated under this section, it shall be unlawful for any person to: (a) Operate a permitted source in violation of any requirement of a permit issued under this section; or (b) fail to submit a permit application at the time required by rules adopted under subsection (3) of this section.

(11) Each air operating permit shall state the origin of and specific legal authority for each requirement included therein. Every requirement in an operating permit shall be based upon the most stringent of the following requirements:

(a) The federal clean air act and rules implementing that act, including provision of the approved state implementation plan;

(b) This chapter and rules adopted thereunder; and

(c) In permits issued by a local air pollution control authority, the requirements of any order or regulation adopted by that authority.

(12) Consistent with the provisions of the federal clean air act, the permitting authority may issue general permits covering categories of permitted sources, and temporary permits authorizing emissions from similar operations at multiple temporary locations.

(13) Permitted sources within the territorial jurisdiction of an authority delegated the operating permit program shall file their permit applications with that authority, except that permit applications for sources regulated on a state-wide basis pursuant to RCW 70.94.395 shall be filed with the department. Permitted sources outside the territorial jurisdiction of a delegated authority shall file their applications with the department.

(14) When issuing operating permits to coal fired electric generating plants, the permitting authority shall give consideration to the federal time lines for the implementation of required control technology.

(15)(a) Each source emitting one hundred tons or more per year of a regulated pollutant shall pay an interim assessment of ten dollars per ton multiplied by the annual process-related emissions of each regulated pollutant emitted during calendar years 1990 and 1991. "Regulated pollutant" shall have the same meaning as defined in section 502(b) of the federal clean air act amendments of 1990.

(b) Fees collected under (a) of this subsection shall be distributed as follows: Eighty percent to the department and twenty percent to local air authorities.

(c) The fees assessed to a source under (a) of this subsection and any fees enacted under subsection (16) of this section shall be limited to the first seven thousand five hundred tons for each regulated pollutant per year.

(16) On or before November 1, 1992, the department, in consultation with the department of revenue, shall report to the appropriate standing committees of the legislature recommendations on air operating permit fees. The department shall recommend a level of fees to cover the direct and indirect costs of implementing the operating permit program required under the 1990 federal clean air act. In making such recommendations, the department shall address:

(a) The costs of the permit program elements as identified in regulations promulgated by the United States environmental protection agency, including, as applicable:

(i) Oversight of a delegated local air authority;

(ii) Ambient air monitoring, modeling, and reporting;

(iii) Training;

(iv) Data management and quality assurance;

(v) Development of state implementation plans;

(vi) Emission inventories;

(vii) Technical assistance;

(viii) Rule making and guidelines; and

(ix) Any other activities, consistent with the federal clean air act, that may be identified by the department;

(b) The appropriate division of fees with delegated local air authorities; and

(c) A methodology for tracking revenues and expenditures from fees paid under this chapter.

(17) The department shall determine the persons liable for the fee imposed by subsection (15) of this section, compute the fee, and provide by November 1 of 1991 and 1992, the identity of the fee payer with the computation of the fee to the department of revenue for collection. The department of revenue shall collect the fee computed by the department from the fee payers identified by the department. The administrative, collection, and penalty provisions of chapter 82.32 RCW shall apply to the collection of the fee by the department of revenue. The department shall provide technical assistance to the department of revenue for decisions made by the department of revenue pursuant to RCW 82.32.160 and 82.32.170. All fees collected shall be deposited in the air operating permit account.

All fees identified in this section shall be due and payable on March 1 of 1992 and 1993.

(18) For sources or source categories not required to obtain permits under subsection (5) of this section, the department or local authority may establish by rule control technology requirements. If control technology rule revisions are made by the department or local authority under this subsection, the department or local authority shall consider the remaining useful life of control equipment previously installed on existing sources before requiring technology changes. The department or any local air authority may issue a general permit, as authorized under the federal clean air act, for such sources.

(19) RCW 70.94.151 shall not apply to any source for which a permit under this section has been issued. [1991 c 199 § 301.]

***Reviser's note:** Reference to subsection (2) is erroneous. Subsection (1) was intended.

Finding—1991 c 199: See note following RCW 70.94.011.
Air operating permit account: RCW 70.94.015.

70.94.163 Source categories not required to have a permit—Recommendations. The department shall prepare recommendations to reduce air emissions for source categories not generally required to have a permit under RCW 70.94.161. Such recommendations shall not require any action by the owner or operator of a source and shall be consistent with rules adopted under chapter 70.95C RCW. The recommendations shall include but not be limited to: Process changes, product substitution, equipment modifications, hazardous substance use reduction, recycling, and energy efficiency. [1991 c 199 § 304.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.170 Air pollution control authority 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 full time control officer, whose sole responsibility shall be to 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. [1991 c 199 § 707; 1969 ex.s. c 168 § 21; 1967 c 238 § 30; 1957 c 232 § 17.]

Finding—1991 c 199: See note following RCW 70.94.011.

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 or appropriate local authority 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, provided that variances to state rules shall require the department's approval prior to being issued by a local authority board. The total time period for a variance and renewal of such variance shall not exceed one year. Variances may be issued by either the department or a local board but only after public hearing or due notice, if the department or board finds that:

(a) The emissions occurring or proposed to occur do not endanger public health or safety or the environment; 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) of this section 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 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.

(c) 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 (a) and (b) of this subsection, 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 department 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 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 34.05 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 70.94.710 through 70.94.730 to any person or his or her 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.

(8) Variances approved under this section shall not be included in orders or permits provided for in RCW 70.94.161 or 70.94.152 until such time as the variance has been accepted by the United States environmental protection agency as part of an approved state implementation plan. [1991 c 199 § 306; 1983 c 3 § 176; 1974 ex.s. c 59 § 1; 1969 ex.s. c 168 § 22; 1967 c 238 § 31.]

Finding—1991 c 199: See note following RCW 70.94.011.

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 under this chapter, 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. [1991 c 199 § 307; 1973 1st ex.s. c 193 § 4; 1969 ex.s. c 168 § 23; 1967 c 238 § 33.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.211 Enforcement actions by air authority—

Notice to violators. At least thirty days prior to the commencement of any formal enforcement action under RCW 70.94.430 or 70.94.431 a local air authority shall 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 directing 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. Every notice of violation shall offer to the alleged violator an opportunity to meet with the local air authority prior to the commencement of enforcement action. [1991 c 199 § 309; 1974 ex.s. c

69 § 4; 1970 ex.s. c 62 § 57; 1969 ex.s. c 168 § 24; 1967 c 238 § 34.]

Finding—1991 c 199: See note following RCW 70.94.011.

Savings—**Effective date**—**Severability**—1970 ex.s. c 62: See notes following RCW 43.21A.010.

Appeal of orders under RCW 70.94.211: RCW 43.21B.310.

70.94.231 Air pollution control authority—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 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. [1991 c 199 § 708; 1969 ex.s. c 168 § 29; 1967 c 238 § 39.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.232 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

70.94.240 Air pollution control advisory council. The board of any authority may 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 at least five appointed members who are residents of the authority and who are preferably skilled and experienced in the field of air pollution control, chemistry, meteorology, public health, or a related field, at least one of whom shall serve as a representative of industry and one of whom shall serve as a representative of the environmental community. The chair of the board of any such authority shall serve as ex officio member of the council and be its chair. 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 or her duties under this chapter. [1991 c 199 § 709; 1969 ex.s. c 168 § 30; 1967 c 238 § 41; 1957 c 232 § 24.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.262 Withdrawal from multicounty authority.

(1) Any county that is part of a multicounty authority, pursuant to RCW 70.94.053, may withdraw from the multicounty authority after January 1, 1992, if the county wishes to provide for air quality protection and regulation by an alternate air quality authority. A withdrawing county shall:

- (a) Create its own single county authority;
- (b) Join another existing multicounty authority with which its boundaries are contiguous;
- (c) Join with one or more contiguous inactive authorities to operate as a new multicounty authority; or
- (d) Become an inactive authority and subject to regulation by the department of ecology.

(2) In order to withdraw from an existing multicounty authority, a county shall make arrangements, by inter-local agreement, for division of assets and liabilities and

the appropriate release of any and all interest in assets of the multicounty authority.

(3) In order to effectuate any of the alternate arrangements in subsection (1) of this section, the procedures of this chapter to create an air pollution control authority shall be met and the actions must be taken at least six months prior to the effective date of withdrawal. The rules of the original multicounty authority shall continue in force for the withdrawing county until such time as all conditions to create an air pollution control authority have been met.

(4) At the effective date of a county's withdrawal, the remaining counties shall reorganize and reconstitute the legislative authority pursuant to this chapter. The air pollution control regulations of the existing multicounty authority shall remain in force and effect after the reorganization.

(5) If a county elects to withdraw from an existing multicounty authority, the air pollution control regulations shall remain in effect for the withdrawing county until suspended by the adoption of rules, regulations, or ordinances adopted under one of the alternatives of subsection (1) of this section. A county shall initiate proceedings to adopt such rules, regulations, or ordinances on or before the effective date of the county's withdrawal. [1991 c 125 § 2.]

70.94.331 Powers and duties of department. (1) The department shall have all the powers as provided in RCW 70.94.141.

(2) The department, in addition to any other powers vested in it by law after consideration at a public hearing held in accordance with chapters 42.30 and 34.05 RCW shall:

(a) Adopt rules 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, except for emission performance standards for new wood stoves and opacity levels for residential solid fuel burning devices which shall be state-wide, but in no event may less stringent standards be enacted by an authority without the prior approval of the department after public hearing and due notice to interested parties;

(c) Adopt by rule air quality standards and emission standards for the control or prohibition of emissions to the outdoor atmosphere of radionuclides, 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. However, an industry, or the air pollution control authority having jurisdiction, can choose, subject to the submittal of appropriate data that the industry has quantified, to have any limit on the opacity of emissions from a source whose emission standard is stated in terms of a weight of particulate per unit volume of air (e.g., grains per dry standard cubic foot) be based on the applicable particulate emission standard

for that source, such that any violation of the opacity limit accurately indicates a violation of the applicable particulate emission standard. Any alternative opacity limit provided by this section that would result in increasing air contaminants emissions in any nonattainment area shall only be granted if equal or greater emission reductions are provided for by the same source obtaining the revised opacity limit. A reasonable fee may be assessed to the industry to which the alternate opacity standard would apply. The fee shall cover only those costs to the air pollution control authority which are directly related to the determination on the acceptability of the alternate opacity standard, including testing, oversight and review of data.

(3) The air quality standards and emission standards may be for the state as a whole or may vary from area to area or source to source, except that emission performance standards for new wood stoves and opacity levels for residential solid fuel burning devices shall be state-wide, 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 reasonably foreseeable air pollution, topographic and meteorologic conditions and other pertinent variables.

(4) The department 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 department 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 and conduct or cause to be conducted a program to determine the quantity of emissions to the atmosphere.

(6) The department 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 department 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 department shall have the power to require the addition to or deletion of a county or counties from an existing authority in order to carry out the purposes of this chapter. 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 34.05 RCW.

(9) The department shall establish rules requiring sources or source categories to apply reasonable and available control methods. Such rules shall apply to those sources or source categories that individually or collectively contribute the majority of state-wide air

emissions of each regulated pollutant. The department shall review, and if necessary, update its rules every five years to ensure consistency with current reasonable and available control methods. The department shall have adopted rules required under this subsection for all sources by July 1, 1996.

For the purposes of this section, "reasonable and available control methods" shall include but not be limited to, changes in technology, processes, or other control strategies. [1991 c 199 § 710; 1988 c 106 § 1. Prior: 1987 c 405 § 13; 1987 c 109 § 39; 1985 c 372 § 4; 1969 ex.s. c 168 § 34; 1967 c 238 § 46.]

Finding—1991 c 199: See note following RCW 70.94.011.

Severability—1987 c 405: See note following RCW 70.94.450.

Purpose—**Short title**—**Construction**—**Rules**—**Severability**—**Captions**—1987 c 109: See notes following RCW 43.21B.001.

Severability—1985 c 372: See note following RCW 70.98.050.

70.94.332 Enforcement actions by department—

Notice to violators. At least thirty days prior to the commencement of any formal enforcement action under RCW 70.94.430 and 70.94.431, the department of ecology shall 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 it for the purpose of providing the department information pertaining to the violation or the charges complained of. Every notice of violation shall offer to the alleged violator an opportunity to meet with the department prior to the commencement of enforcement action. [1991 c 199 § 711; 1987 c 109 § 18; 1967 c 238 § 47.]

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—**Short title**—**Construction**—**Rules**—**Severability**—**Captions**—1987 c 109: See notes following RCW 43.21B.001.

Appeal of orders under RCW 70.94.332: RCW 43.21B.310.

70.94.385 State financial aid—Application

for—Requirements. (1) Any authority may apply to the department for state financial aid. The department shall annually establish the amount of state funds available for the local authorities taking into consideration available federal and state funds. The establishment of funding amounts shall be consistent with federal requirements and local maintenance of effort necessary to carry out the provisions of this chapter. Any such aid shall be expended from the general fund or from other appropriations as the legislature may provide for this purpose: PROVIDED, That federal funds shall be utilized to the maximum unless otherwise approved by the department: PROVIDED FURTHER, That the amount of state funds provided to local authorities during the previous year shall not be reduced without a public notice or public hearing held by the department if requested by the affected local authority, unless such

changes are the direct result of a reduction in the available federal funds for air pollution control programs.

(2) Before any such application is approved and financial aid is given or approved by the department, the authority shall demonstrate to the satisfaction of the department that it is fulfilling the requirements of this chapter. If the department 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 department 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 department shall adopt rules 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 department to determine the need for state aid. [1991 c 199 § 712; 1987 c 109 § 41; 1969 ex.s. c 168 § 37; 1967 c 238 § 51.]

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—**Short title**—**Construction**—**Rules**—**Severability**—**Captions**—1987 c 109: See notes following RCW 43.21B.001.

70.94.395 Air contaminant sources—Regulation by department; authorities may be more stringent—

Hearing—Standards. If the department 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 to control and/or prevent the emission of air contaminants from such source. An authority may, after public hearing and a finding by the board of a need for more stringent rules than those adopted by the department under this section, propose the adoption of such rules by the department for the control of emissions from the particular type or class of air contaminant source within the geographical area of the authority. The department shall hold a public hearing and shall adopt the proposed rules within the area of the requesting authority, unless it finds that the proposed rules are inconsistent with the rules adopted by the department under this section. When such standards are adopted by the department it shall delegate solely to the requesting authority all powers necessary for their enforcement at the request of the authority. If after public hearing the department finds that the regulation on a state-wide basis of a particular type or 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 department may relinquish exclusive jurisdiction over such source. [1991 c 199 § 713; 1987 c 109 § 43; 1969 ex.s. c 168 § 39; 1967 c 238 § 53.]

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—**Short title**—**Construction**—**Rules**—**Severability**—**Captions**—1987 c 109: See notes following RCW 43.21B.001.

70.94.405 Air pollution control authority—Review by department of program. At any time after an authority has been activated for no less than one year, the department may, on its own motion, conduct a hearing held in accordance with chapters 42.30 and 34.05 RCW, 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. If at such hearing the department finds that such authority is not carrying out its air pollution control or prevention program in good faith, 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, or is not carrying out the provisions of this chapter, it shall set forth in a report or order 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 department. [1991 c 199 § 714; 1987 c 109 § 45; 1969 ex.s. c 168 § 41; 1967 c 238 § 55.]

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.410 Air pollution control authority—Assumption of control by department. (1) If, after thirty days from the time that the department issues a report or order to an authority under RCW 70.94.400 and 70.94.405, such authority has not taken action which indicates that it is attempting in good faith to implement the recommendations or actions of the department as set forth in the report or order, the department 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 department shall become the sole body with authority to make and enforce rules and regulations for the control and/or prevention of air pollution within the geographical area of such authority. If this occurs, the department may assume all those powers which are given to it by law to effectuate the purposes of this chapter. The department may, by order, continue in effect and enforce provisions of the ordinances, resolutions, or rules of such authority which are not less stringent than those requirements which the department may have found applicable to the area under RCW 70.94.331, until such time as the department adopts its own rules. Any rules promulgated by the department shall be subject to the provisions of chapter 34.05 RCW. Any enforcement actions shall be subject to RCW 43.21B.300 or 43.21B.310.

(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 department and which complies with the purposes of this chapter and with applicable rules and orders of the department.

(3) Nothing in this chapter shall prevent the department from withdrawing the exercise of its jurisdiction

over an authority upon its own motion if the department has found at a hearing held in accordance with chapters 42.30 and 34.05 RCW, that the air pollution prevention and control program of such authority will be carried out in good faith, 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, and that the program complies with the provisions of this chapter. Upon the withdrawal of the department, the department 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 department. [1991 c 199 § 715; 1987 c 109 § 46; 1969 ex.s. c 168 § 42; 1967 c 238 § 56.]

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.420 State departments and agencies to cooperate with department and authorities. 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, other property, or other activity creating or likely to create significant air pollution shall cooperate with the department and with air pollution control agencies in preventing and/or controlling the pollution of the air in any area insofar as the discharge of air contaminants from or by such building, installation, other property, or activity 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 or rules. [1991 c 199 § 716; 1987 c 109 § 47; 1969 ex.s. c 168 § 44; 1967 c 238 § 58.]

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.430 Penalties. (1) Any person who knowingly violates any of the provisions of chapter 70.94 or 70.120 RCW, or any ordinance, resolution, or regulation in force pursuant thereto shall be guilty of a crime and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than one year, or by both for each separate violation.

(2) Any person who negligently releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm shall be guilty of a crime and shall, upon conviction, be punished by a fine of not more than

ten thousand dollars, or by imprisonment for not more than one year, or both.

(3) Any person who knowingly releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that he or she thereby places another person in imminent danger of death or substantial bodily harm, shall be guilty of a crime and shall, upon conviction, be punished by a fine of not less than fifty thousand dollars, or by imprisonment for not more than five years, or both.

(4) Any person who knowingly fails to disclose a potential conflict of interest under RCW 70.94.100 shall be guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine or not more than five thousand dollars. [1991 c 199 § 310; 1984 c 255 § 1; 1973 1st ex.s. c 176 § 1; 1967 c 238 § 61.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.431 Civil penalties—Excusable excess emissions. (1) 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, chapter 70.120 RCW, or any of the rules in force under such chapters may incur a civil penalty in an amount not to exceed ten thousand 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.

Any person who fails to take action as specified by an order issued pursuant to this chapter shall be liable for a civil penalty of not more than ten thousand dollars for each day of continued noncompliance.

(2) Penalties incurred but not paid shall accrue interest, beginning on the ninety-first day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the thirty-first day following final resolution of the appeal.

The maximum penalty amounts established in this section may be increased annually to account for inflation as determined by the state office of the economic and revenue forecast council.

(3) 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 penalties provided in this section shall be imposed pursuant to RCW 43.21B.300.

(4) All penalties recovered under this section by the department shall be paid into the state treasury and credited to the air pollution control account established in RCW 70.94.015 or, if recovered by the authority, shall be paid into the treasury of the authority and credited to its funds. If a prior penalty for the same violation has been paid to a local authority, the penalty imposed by the department under subsection (1) of this section shall be reduced by the amount of the payment.

(5) 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.

(6) Public or private entities that are recipients or potential recipients of department grants, whether for air quality related activities or not, may have such grants rescinded or withheld by the department for failure to comply with provisions of this chapter.

(7) In addition to other penalties provided by this chapter, persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than ninety days late with such payments may be subject to a penalty equal to three times the amount of the original fee owed.

(8) By January 1, 1992, the department shall develop rules for excusing excess emissions from enforcement action if such excess emissions are unavoidable. The rules shall specify the criteria and procedures for the department and local air authorities to determine whether a period of excess emissions is excusable in accordance with the state implementation plan. [1991 c 199 § 311; 1990 c 157 § 1; 1987 c 109 § 19; 1984 c 255 § 2; 1973 1st ex.s. c 176 § 2; 1969 ex.s. c 168 § 53.]

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—**Short title**—**Construction**—**Rules**—**Severability**—**Captions**—1987 c 109: See notes following RCW 43.21B.001.

70.94.455 Residential and commercial construction—Burning and heating device standards. After January 1, 1992, no used solid fuel burning device shall be installed in new or existing buildings unless such device is either Oregon department of environmental quality phase II or United States environmental protection agency certified or a pellet stove either certified or exempt from certification by the United States environmental protection agency.

(1) By July 1, 1992, the state building code council shall adopt rules requiring an adequate source of heat other than wood stoves in all new and substantially remodeled residential and commercial construction. This rule shall apply (a) to areas designated by a county to be an urban growth area under chapter 36.70A RCW; and (b) to areas designated by the environmental protection agency as being in nonattainment for particulate matter.

(2) For purposes of this section, "substantially remodeled" means any alteration or restoration of a building exceeding sixty percent of the appraised value of such building within a twelve-month period. [1991 c 199 § 503.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.457 Solid fuel burning devices—Emission performance standards. The department of ecology shall establish by rule under chapter 34.05 RCW:

(1) State-wide emission performance standards for new solid fuel burning devices. Notwithstanding any other provision of this chapter which allows an authority to adopt more stringent emission standards, no authority

shall adopt any emission standard for new solid fuel burning devices other than the state-wide standard adopted by the department under this section.

(a) After January 1, 1995, no solid fuel burning device shall be offered for sale that does not meet the following particulate air contaminant emission standards under the test methodology of the United States environmental protection agency in effect on January 1, 1991, or an equivalent standard under any test methodology adopted by the United States environmental protection agency subsequent to such date: (i) Two and one-half grams per hour for catalytic wood stoves; and (ii) four and one-half grams per hour for all other solid fuel burning devices. For purposes of this subsection, "equivalent" shall mean the emissions limits specified in this subsection multiplied by a statistically reliable conversion factor determined by the department that compares the difference between the emission test methodology established by the United States environmental protection agency prior to May 15, 1991, with the test methodology adopted subsequently by the agency. Subsection (a) of this subsection does not apply to fireplaces.

(b) After January 1, 1997, no fireplace, except masonry fireplaces, shall be offered for sale unless such fireplace meets the 1990 United States environmental protection agency standards for wood stoves or equivalent standard that may be established by the state building code council by rule. Prior to January 1, 1997, the state building code council shall establish by rule a methodology for the testing of factory-built fireplaces. The methodology shall be designed to achieve a particulate air emission standard equivalent to the 1990 United States environmental protection agency standard for wood stoves. In developing the rules, the council shall include on the technical advisory committee at least one representative from the masonry fireplace builders and at least one representative of the factory-built fireplace manufacturers.

(c) Prior to January 1, 1997, the state building code council shall establish by rule design standards for the construction of new masonry fireplaces in Washington state. In developing the rules, the council shall include on the technical advisory committee at least one representative from the masonry fireplace builders and at least one representative of the factory-built fireplace manufacturers. It shall be the goal of the council to develop design standards that generally achieve reductions in particulate air contaminant emissions commensurate with the reductions being achieved by factory-built fireplaces at the time the standard is established.

(d) Actions of the department and local air pollution control authorities under this section shall preempt actions of other state agencies and local governments for the purposes of controlling air pollution from solid fuel burning devices, except where authorized by *this act.

(e) Subsection (1)(a) of this section shall not apply to fireplaces.

(f) Notwithstanding (a) of this subsection, the department is authorized to adopt, by rule, emission standards adopted by the United States environmental

protection agency for new wood stoves sold at retail. For solid fuel burning devices for which the United States environmental protection agency has not established emission standards, the department may exempt or establish, by rule, state-wide standards including emission levels and test procedures for such devices and such emission levels and test procedures shall be equivalent to emission levels per pound per hour burned for other new wood stoves and fireplaces regulated under this subsection.

(2) A program to:

(a) Determine whether a new solid fuel burning device complies with the state-wide emission performance standards established in subsection (1) of this section; and

(b) Approve the sale of devices that comply with the state-wide emission performance standards. [1991 c 199 § 501; 1987 c 405 § 4.]

***Reviser's note:** For codification of "this act" [1991 c 199], see Codification Tables, Supplement Volume 9A.

Finding—1991 c 199: See note following RCW 70.94.011.

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.470 Residential solid fuel burning devices—Opacity levels—Enforcement and public education. (1) The department shall establish, by rule under chapter 34.05 RCW, (a) a state-wide opacity level of twenty percent for residential solid fuel burning devices for the purpose of enforcement on a complaint basis and (b) a state-wide opacity of ten percent for purposes of public education.

(2) Notwithstanding any other provision of this chapter which may allow an authority to adopt a more stringent opacity level, no authority shall adopt or enforce an opacity level for solid fuel burning devices other than established in this section.

(3) Actions of the department and local air pollution control authorities under this section shall preempt actions of other state agencies and local governments for the purposes of controlling air pollution from solid fuel burning devices, except where authorized by *this act. [1991 c 199 § 502; 1987 c 405 § 5.]

***Reviser's note:** For codification of "this act" [1991 c 199], see Codification Tables, Supplement Volume 9A.

Finding—1991 c 199: See note following RCW 70.94.011.

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.473 Limitations on burning wood for heat. (1) Any person in a residence or commercial establishment which has an adequate source of heat without burning wood shall:

(a) Not burn wood in any solid fuel burning device whenever the department has determined under RCW 70.94.715 that any air pollution episode exists in that area;

(b) Not burn wood in any solid fuel burning device except those which are either Oregon department of environmental quality phase II or United States environmental protection agency certified or certified by the department under RCW 70.94.457(1) or a pellet stove either certified or issued an exemption by the United

States environmental protection agency in accordance with Title 40, Part 60 of the code of federal regulations, in the geographical area and for the period of time that a first stage of impaired air quality has been determined, by the department or any authority, for that area. A first stage of impaired air quality is reached when particulates ten microns and smaller in diameter are at an ambient level of seventy-five micrograms per cubic meter measured on a twenty-four hour average or when carbon monoxide is at an ambient level of eight parts of contaminant per million parts of air by volume measured on an eight-hour average; and

(c) Not burn wood in any solid fuel burning device in a geographical area and for the period of time that a second stage of impaired air quality has been determined by the department or any authority, for that area. A second stage of impaired air quality is reached when particulates ten microns and smaller in diameter are at an ambient level of one hundred five micrograms per cubic meter measured on a twenty-four hour average.

(2) If a local air authority exercises the limitation on solid fuel burning devices specified under RCW 70.94.477(2), a single stage of impaired air quality applies in the geographical area defined by the authority in accordance with RCW 70.94.477(2) and is reached when particulates ten microns and smaller in diameter are at an ambient level of ninety micrograms per cubic meter measured on a twenty-four hour average or when carbon monoxide is at an ambient level of eight parts of contaminant per million parts of air by volume measured on an eight-hour average.

If this single stage of impaired air quality is reached, no person in a residence or commercial establishment that has an adequate source of heat without burning wood shall burn wood in any solid fuel burning device, including those which meet the standards set forth in RCW 70.94.457.

(3) Actions of the department and local air pollution control authorities under this section shall preempt actions of other state agencies and local governments for the purposes of controlling air pollution from solid fuel burning devices, except where authorized by *this act. [1991 c 199 § 504; 1990 c 128 § 2; 1987 c 405 § 6.]

***Reviser's note:** For codification of "this act" [1991 c 199], see Codification Tables, Supplement Volume 9A.

Finding—1991 c 199: See note following RCW 70.94.011.

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.475 Liability of condominium owners' association or resident association. A condominium owners' association or an association formed by residents of a multiple-family dwelling are not liable for violations of RCW 70.94.473 by a resident of a condominium or multiple-family dwelling. The associations shall cooperate with local air pollution control authorities to acquaint residents with the provisions of this section. [1990 c 157 § 2.]

70.94.477 Limitations on use of solid fuel burning devices. (1) Unless allowed by rule, under chapter 34.05

RCW, a person shall not cause or allow any of the following materials to be burned in any residential solid fuel burning device:

- (a) Garbage;
- (b) Treated wood;
- (c) Plastics;
- (d) Rubber products;
- (e) Animals;
- (f) Asphaltic products;
- (g) Waste petroleum products;
- (h) Paints; or
- (i) Any substance, other than properly seasoned fuel wood, which normally emits dense smoke or obnoxious odors.

(2) On or after July 1, 1995, a local authority may geographically limit the use of solid fuel burning devices, except fireplaces as defined in RCW 70.94.453(3), wood stoves meeting the standards set forth in RCW 70.94.457 or pellet stoves issued an exemption certificate by the United States environmental protection agency in accordance with Title 40, Part 60 of the code of federal regulations. An authority shall allow an exemption from this subsection for low-income persons who reside in a geographical area affected by this subsection. In the exercise of this limitation, a local authority shall consider the following factors:

(a) The contribution of solid fuel burning devices that do not meet the standards set forth in RCW 70.94.457 to nonattainment of national ambient air quality standards;

(b) The population density of geographical areas within the local authority's jurisdiction giving greater consideration to urbanized areas; and

(c) The public health effects of use of solid fuel burning devices which do not meet the standards set forth in RCW 70.94.457. [1990 c 128 § 3; 1987 c 405 § 9.]

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.480 Wood stove education program. (1) The department of ecology shall establish a program to educate wood stove dealers and the public about:

(a) The effects of wood stove emissions on health and air quality;

(b) Methods of achieving better efficiency and emission performance from wood stoves;

(c) Wood stoves that have been approved by the department;

(d) The benefits of replacing inefficient wood stoves with stoves approved under RCW 70.94.457.

(2) Persons selling new wood stoves shall distribute and verbally explain educational materials describing when a stove can and cannot be legally used to customers purchasing new wood stoves. [1990 c 128 § 6; 1987 c 405 § 3.]

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.483 Wood stove education and enforcement account created—Fee imposed on wood stove sales. (Effective until January 1, 1992.) (1) The wood stove education and enforcement account is hereby created in

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Severability—1987 c 405: See note following RCW 70.94.450.

70.94.483 Wood stove education and enforcement account created—Fee imposed on wood stove sales. (Effective until January 1, 1992.) (1) The wood stove education and enforcement account is hereby created in

the state treasury. Money placed in the account shall include all money received under subsection (2) of this section and any other money appropriated by the legislature. Money in the account shall be spent for the purposes of the wood stove education program established under RCW 70.94.480 and for enforcement of the wood stove program, and shall be subject to legislative appropriation.

(2) The department of ecology, with the advice of the advisory committee, shall set a flat fee, not to exceed fifteen dollars, on the retail sale, as defined in RCW 82.04.050, of each solid fuel burning device, excepting masonry fireplaces. The fee shall be imposed upon the consumer and shall not be subject to the retail sales tax provisions of chapters 82.08 and 82.12 RCW. The fee may be adjusted annually above fifteen dollars according to changes in the consumer price index. The fee shall be collected by the department of revenue in conjunction with the retail sales tax under chapter 82.08 RCW. If the seller fails to collect the fee herein imposed or fails to remit the fee to the department of revenue in the manner prescribed in chapter 82.08 RCW, the seller shall be personally liable to the state for the amount of the fee. The collection provisions of chapter 82.32 RCW shall apply. The department of revenue shall deposit fees collected under this section in the wood stove education and enforcement account. [1991 1st sp.s. c 13 § 64; 1990 c 128 § 5; 1987 c 405 § 10.]

Expiration dates—1991 1st sp.s. c 13 §§ 47, 64, 108: "(1) Sections 47 and 108 of this act shall expire September 1, 1991.

(2) Section 64 of this act shall expire January 1, 1992." [1991 1st sp.s. c 13 § 142.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.483 Wood stove education and enforcement account created—Fee imposed on solid fuel burning device sales. (Effective January 1, 1992.) (1) The wood stove education and enforcement account is hereby created in the state treasury. Money placed in the account shall include all money received under subsection (2) of this section and any other money appropriated by the legislature. Money in the account shall be spent for the purposes of the wood stove education program established under RCW 70.94.480 and for enforcement of the wood stove program, and shall be subject to legislative appropriation.

(2) The department of ecology, with the advice of the advisory committee, shall set a flat fee of thirty dollars, on the retail sale, as defined in RCW 82.04.050, of each solid fuel burning device after January 1, 1992. The fee shall be imposed upon the consumer and shall not be subject to the retail sales tax provisions of chapters 82.08 and 82.12 RCW. The fee may be adjusted annually above thirty dollars to account for inflation as determined by the state office of the economic and revenue forecast council. The fee shall be collected by the department of revenue in conjunction with the retail sales tax under chapter 82.08 RCW. If the seller fails to collect the fee herein imposed or fails to remit the fee to the department of revenue in the manner prescribed in

chapter 82.08 RCW, the seller shall be personally liable to the state for the amount of the fee. The collection provisions of chapter 82.32 RCW shall apply. The department of revenue shall deposit fees collected under this section in the wood stove education and enforcement account. [1991 1st sp.s. c 13 §§ 64, 65; 1991 c 199 § 505; 1990 c 128 § 5; 1987 c 405 § 10.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Finding—1991 c 199: See note following RCW 70.94.011.

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.521 Transportation demand management—Findings. The legislature finds that automotive traffic in Washington's metropolitan areas is the major source of emissions of air contaminants. This air pollution causes significant harm to public health, causes damage to trees, plants, structures, and materials and degrades the quality of the environment.

Increasing automotive traffic is also aggravating traffic congestion in Washington's metropolitan areas. This traffic congestion imposes significant costs on Washington's businesses, governmental agencies, and individuals in terms of lost working hours and delays in the delivery of goods and services. Traffic congestion worsens automobile-related air pollution, increases the consumption of fuel, and degrades the habitability of many of Washington's cities and suburban areas. The capital and environmental costs of fully accommodating the existing and projected automobile traffic on roads and highways are prohibitive. Decreasing the demand for vehicle trips is significantly less costly and at least as effective in reducing traffic congestion and its impacts as constructing new transportation facilities such as roads and bridges, to accommodate increased traffic volumes.

The legislature also finds that increasing automotive transportation is a major factor in increasing consumption of gasoline and, thereby, increasing reliance on imported sources of petroleum. Moderating the growth in automotive travel is essential to stabilizing and reducing dependence on imported petroleum and improving the nation's energy security.

The legislature further finds that reducing the number of commute trips to work made via single-occupant cars and light trucks is an effective way of reducing automobile-related air pollution, traffic congestion, and energy use. Major employers have significant opportunities to encourage and facilitate reducing single-occupant vehicle commuting by employees.

The intent of this chapter is to require local governments in those counties experiencing the greatest automobile-related air pollution and traffic congestion to develop and implement plans to reduce single-occupant vehicle commute trips. Such plans shall require major employers and employers at major worksites to implement programs to reduce single-occupant vehicle commuting by employees at major worksites. Local governments in counties experiencing significant but less severe automobile-related air pollution and traffic congestion may implement such plans. State agencies shall implement programs to reduce single-occupant vehicle

commuting at all major worksites throughout the state. [1991 c 202 § 10.]

Captions not law—Effective date—Severability—1991 c 202:
See notes following RCW 47.50.010.

70.94.524 Transportation demand management—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "A major employer" means a private or public employer that employs one hundred or more full-time employees at a single worksite who begin their regular work day between 6:00 a.m. and 9:00 a.m. on weekdays for at least twelve continuous months during the year.

(2) "Major worksite" means a building or group of buildings that are on physically contiguous parcels of land or on parcels separated solely by private or public roadways or rights of way, and at which there are one hundred or more full-time employees of one or more employers, who begin their regular work day between 6:00 a.m. and 9:00 a.m. on weekdays, for at least twelve continuous months.

(3) "Commute trip reduction zones" mean areas, such as census tracts or combinations of census tracts, within a jurisdiction that are characterized by similar employment density, population density, level of transit service, parking availability, access to high occupancy vehicle facilities, and other factors that are determined to affect the level of single occupancy vehicle commuting.

(4) "Commute trip" means trips made from a worker's home to a worksite during the peak period of 6:00 a.m. to 9:00 a.m. on weekdays.

(5) "Proportion of single-occupant vehicle commute trips" means the number of commute trips made by single-occupant automobiles divided by the number of full-time employees.

(6) "Commute trip vehicle miles traveled per employee" means the sum of the individual vehicle commute trip lengths in miles over a set period divided by the number of full-time employees during that period.

(7) "Base year" means the year January 1, 1992, through December 31, 1992, on which goals for vehicle miles traveled and single-occupant vehicle trips shall be based. Base year goals may be determined using the 1990 journey-to-work census data projected to the year 1992 and shall be consistent with the growth management act. The task force shall establish a method to be used by jurisdictions to determine reductions of vehicle miles traveled. [1991 c 202 § 11.]

Captions not law—Effective date—Severability—1991 c 202:
See notes following RCW 47.50.010.

70.94.527 Transportation demand management—Requirements for counties and cities. (1) Each county with a population over one hundred fifty thousand, and each city or town within those counties containing a major employer shall, by October 1, 1992, adopt by ordinance and implement a commute trip reduction plan for all major employers. The plan shall be developed in cooperation with local transit agencies, regional transportation planning organizations as established in RCW

47.80.020, major employers, and the owners of and employers at major worksites. The plan shall be designed to achieve reductions in the proportion of single-occupant vehicle commute trips and the commute trip vehicle miles traveled per employee by employees of major public and private sector employers in the jurisdiction.

(2) All other counties, and cities and towns in those counties, may adopt and implement a commute trip reduction plan.

(3) The department of ecology may, after consultation with the state energy office, as part of the state implementation plan for areas that do not attain the national ambient air quality standards for carbon monoxide or ozone, require municipalities other than those identified in subsection (1) of this section to adopt and implement commute trip reduction plans if the department determines that such plans are necessary for attainment of said standards.

(4) A commute trip reduction plan shall be consistent with the guidelines established under RCW 70.94.537 and shall include but is not limited to (a) goals for reductions in the proportion of single-occupant vehicle commute trips and the commute trip vehicle miles traveled per employee; (b) designation of commute trip reduction zones; (c) requirements for major public and private sector employers to implement commute trip reduction programs; (d) a commute trip reduction program for employees of the county, city, or town; (e) a review of local parking policies and ordinances as they relate to employers and major worksites and any revisions necessary to comply with commute trip reduction goals and guidelines; (f) an appeals process by which major employers, who as a result of special characteristics of their business or its locations would be unable to meet the requirements of a commute trip reduction plan, may obtain waiver or modification of those requirements; and (g) means for determining base year values of the proportion of single-occupant vehicle commute trips and the commute trip vehicle miles traveled per employee and progress toward meeting commute trip reduction plan goals on an annual basis. Goals which are established shall take into account existing transportation demand management efforts which are made by major employers. Each jurisdiction shall ensure that employers shall receive full credit for the results of transportation demand management efforts and commute trip reduction programs which have been implemented by major employers prior to the base year. The goals for miles traveled per employee for all major employers shall not be less than a fifteen percent reduction from the base year value of the commute trip reduction zone in which their worksite is located by January 1, 1995, twenty-five percent reduction from the base year values by January 1, 1997, and thirty-five percent reduction from the base year values by January 1, 1999.

(5) A county, city, or town may, as part of its commute trip reduction plan, require commute trip reduction programs for employers with ten or more full time employees at major worksites in federally designated non-attainment areas for carbon monoxide and ozone. The

county, city or town shall develop the programs in cooperation with affected employers and provide technical assistance to the employers in implementing such programs.

(6) The commute trip reduction plans adopted by counties, cities, and towns under this chapter shall be consistent with and may be incorporated in applicable state or regional transportation plans and local comprehensive plans and shall be coordinated, and consistent with, the commute trip reduction plans of counties, cities, or towns with which the county, city, or town has, in part, common borders or related regional issues. Such regional issues shall include assuring consistency in the treatment of employers who have worksites subject to the requirements of this chapter in more than one jurisdiction. Counties, cities, or towns adopting commute trip reduction plans may enter into agreements through the interlocal cooperation act or by resolution or ordinance as appropriate with other jurisdictions, local transit agencies, or regional transportation planning organizations to coordinate the development and implementation of such plans. Counties, cities, or towns adopting a commute trip reduction plan shall review it annually and revise it as necessary to be consistent with applicable plans developed under RCW 36.70A.070.

(7) Each county, city, or town implementing a commute trip reduction program shall, within thirty days submit a summary of its plan along with certification of adoption to the commute trip reduction task force established under RCW 70.94.537.

(8) Each county, city, or town implementing a commute trip reduction program shall submit an annual progress report to the commute trip reduction task force established under RCW 70.94.537. The report shall be due July 1, 1994, and each July 1 thereafter through July 1, 2000. The report shall describe progress in attaining the applicable commute trip reduction goals for each commute trip reduction zone and shall highlight any problems being encountered in achieving the goals. The information shall be reported in a form established by the commute trip reduction task force.

(9) Any waivers or modifications of the requirements of a commute trip reduction plan granted by a jurisdiction shall be submitted for review to the commute trip reduction task force established under RCW 70.94.537. The commute trip reduction task force may not deny the granting of a waiver or modification of the requirements of a commute trip reduction plan by a jurisdiction but they may notify the jurisdiction of any comments or objections.

(10) Each county, city, or town implementing a commute trip reduction program shall count commute trips eliminated through work-at-home options or alternate work schedules as one and two-tenths vehicle trips eliminated for the purpose of meeting trip reduction goals.

(11) Plans implemented under this section shall not apply to commute trips for seasonal agricultural employees.

(12) Plans implemented under this section shall not apply to construction worksites when the expected duration of the construction project is less than two years. [1991 c 202 § 12.]

~~Captions not law—Effective date—Severability—1991 c 202:~~
See notes following RCW 47.50.010.

70.94.531 Transportation demand management—Requirements for employers. (1) Not more than six months after the adoption of the commute trip reduction plan by a jurisdiction, each major employer in that jurisdiction shall develop a commute trip reduction program and shall submit a description of that program to the jurisdiction for review. The program shall be implemented not more than six months after submission to the jurisdiction.

(2) A commute trip reduction program shall consist of, at a minimum (a) designation of a transportation coordinator and the display of the name, location, and telephone number of the coordinator in a prominent manner at each affected worksite; (b) regular distribution of information to employees regarding alternatives to single-occupant vehicle commuting; (c) an annual review of employee commuting and reporting of progress toward meeting the single-occupant vehicle reduction goals to the county, city, or town consistent with the method established in the commute trip reduction plan; and (d) implementation of a set of measures designed to achieve the applicable commute trip reduction goals adopted by the jurisdiction. Such measures may include but are not limited to:

(i) Provision of preferential parking or reduced parking charges, or both, for high occupancy vehicles;

(ii) Instituting or increasing parking charges for single-occupant vehicles;

(iii) Provision of commuter ride matching services to facilitate employee ridesharing for commute trips;

(iv) Provision of subsidies for transit fares;

(v) Provision of vans for van pools;

(vi) Provision of subsidies for car pooling or van pooling;

(vii) Permitting the use of the employer's vehicles for car pooling or van pooling;

(viii) Permitting flexible work schedules to facilitate employees' use of transit, car pools, or van pools;

(ix) Cooperation with transportation providers to provide additional regular or express service to the worksite;

(x) Construction of special loading and unloading facilities for transit, car pool, and van pool users;

(xi) Provision of bicycle parking facilities, lockers, changing areas, and showers for employees who bicycle or walk to work;

(xii) Provision of a program of parking incentives such as a rebate for employees who do not use the parking facility;

(xiii) Establishment of a program to permit employees to work part or full time at home or at an alternative worksite closer to their homes;

(xiv) Establishment of a program of alternative work schedules such as compressed work week schedules which reduce commuting; and

(xv) Implementation of other measures designed to facilitate the use of high-occupancy vehicles such as on-site day care facilities and emergency taxi services.

(3) Employers or owners of worksites may form or utilize existing transportation management associations to assist members in developing and implementing commute trip reduction programs. [1991 c 202 § 13.]

Captions not law—Effective date—Severability—1991 c 202:
See notes following RCW 47.50.010.

70.94.534 Transportation demand management—Jurisdictions' review and penalties. (1) Each jurisdiction implementing a commute trip reduction plan under this chapter or as part of a plan or ordinance developed under RCW 36.70A.070 shall review each employer's initial commute trip reduction program to determine if the program is likely to meet the applicable commute trip reduction goals. The employer shall be notified by the jurisdiction of its findings. If the jurisdiction finds that the program is not likely to meet the applicable commute trip reduction goals, the jurisdiction will work with the employer to modify the program as necessary. The jurisdiction shall complete review of each employer's initial commute trip reduction program within three months of receipt.

(2) Each jurisdiction shall annually review each employer's progress toward meeting the applicable commute trip reduction goals. If it appears an employer is not likely to meet the applicable commute trip reduction goals, the jurisdiction shall work with the employer to make modifications to the commute trip reduction program.

(3) If an employer fails to meet the applicable commute trip reduction goals, the jurisdiction shall propose modifications to the program and direct the employer to revise its program within thirty days to incorporate those modifications or modifications which the jurisdiction determines to be equivalent.

(4) Each jurisdiction implementing a commute trip reduction plan pursuant to this chapter may impose civil penalties, in the manner provided in chapter 7.80 RCW, for failure by an employer to implement a commute trip reduction program or to modify its commute trip reduction program as required in subsection (3) of this section. No major employer shall be liable for civil penalties under this chapter if failure to achieve a commute trip reduction program goal was the result of an inability to reach agreement with a certified collective bargaining agent under applicable laws where the issue was raised by the employer and pursued in good faith. [1991 c 202 § 14.]

Captions not law—Effective date—Severability—1991 c 202:
See notes following RCW 47.50.010.

70.94.537 Transportation demand management—Commute trip reduction task force. (1) A twenty-three member state commute trip reduction task force shall be established as follows:

(a) The director of the state energy office or the director's designee who shall serve as chair;

(b) The secretary of the department of transportation or the secretary's designee;

(c) The director of the department of ecology or the director's designee;

(d) The director of the department of community development or the director's designee;

(e) The director of the department of general administration or the director's designee;

(f) Three representatives from counties appointed by the governor from a list of at least six recommended by the Washington state association of counties;

(g) Three representatives from cities and towns appointed by the governor from a list of at least six recommended by the association of Washington cities;

(h) Three representatives from transit agencies appointed by the governor from a list of at least six recommended by the Washington state transit association;

(i) Six representatives of employers at or owners of major worksites in Washington appointed by the governor from a list of at least twelve recommended by the association of Washington business; and

(j) Three citizens appointed by the governor.

Members of the commute trip reduction task force shall serve without compensation but shall be reimbursed for travel expenses as provided in RCW 43.03-.050 and 43.03.060. Members appointed by the governor shall be compensated in accordance with RCW 43.03-.220. The task force has all powers necessary to carry out its duties as prescribed by this chapter. The task force shall be dissolved on July 1, 2000.

(2) By March 1, 1992, the commute trip reduction task force shall establish guidelines for commute trip reduction plans. The guidelines are intended to ensure consistency in commute trip reduction plans and goals among jurisdictions while fairly taking into account differences in employment and housing density, employer size, existing and anticipated levels of transit service, special employer circumstances, and other factors the task force determines to be relevant. The guidelines shall include:

(a) Criteria for establishing commute trip reduction zones;

(b) Methods and information requirements for determining base year values of the proportion of single-occupant vehicle commute trips and the commute trip vehicle miles traveled per employee and progress toward meeting commute trip reduction plan goals;

(c) Model commute trip reduction ordinances;

(d) Methods for assuring consistency in the treatment of employers who have worksites subject to the requirements of this chapter in more than one jurisdiction;

(e) An appeals process by which major employers, who as a result of special characteristics of their business or its locations would be unable to meet the requirements of a commute trip reduction plan, may obtain a waiver or modification of those requirements and criteria for determining eligibility for waiver or modification;

(f) Methods to ensure that employers shall receive full credit for the results of transportation demand management efforts and commute trip reduction programs

which have been implemented by major employers prior to the base year;

(g) Alternative commute trip reduction goals for major employers which cannot meet the goals of this chapter because of the unique nature of their business; and

(h) Alternative commute trip reduction goals for major employers whose worksites change and who contribute substantially to traffic congestion in a trip reduction zone.

(3) The task force shall assess the commute trip reduction options available to employers other than major employers and make recommendations to the legislature by October 1, 1992. The recommendations shall include the minimum size of employer who shall be required to implement trip reduction programs and the appropriate methods those employers can use to accomplish trip reduction goals.

(4) The task force shall review progress toward implementing commute trip reduction plans and programs and the costs and benefits of commute trip reduction plans and programs and shall make recommendations to the legislature by December 1, 1995, and December 1, 1999. In assessing the costs and benefits, the task force shall consider the costs of not having implemented commute trip reduction plans and programs. The task force shall examine other transportation demand management programs nationally and incorporate its findings into its recommendations to the legislature. The recommendations shall address the need for continuation, modification, or termination or any or all requirements of this chapter. The recommendations made December 1, 1995, shall include recommendations regarding extension of the requirements of this chapter to employers with fifty or more full-time employees at a single worksite who begin their regular work day between 6:00 a.m. and 9:00 a.m. on weekdays for more than twelve continuous months. [1991 c 202 § 15.]

Captions not law—Effective date—Severability—1991 c 202:
See notes following RCW 47.50.010.

70.94.541 Transportation demand management—Technical assistance team. (1) A technical assistance team shall be established under the direction of the state energy office and include representatives of the departments of transportation and ecology. The team shall provide staff support to the commute trip reduction task force in carrying out the requirements of RCW 70.94.537 and to the department of general administration in carrying out the requirements of RCW 70.94.551.

(2) The team shall provide technical assistance to counties, cities, and towns, the department of general administration, other state agencies, and other employers in developing and implementing commute trip reduction plans and programs. The technical assistance shall include: (a) Guidance in determining base and subsequent year values of single-occupant vehicle commuting proportion and commute trip reduction vehicle miles traveled to be used in determining progress in attaining plan

goals; (b) developing model plans and programs appropriate to different situations; and (c) providing consistent training and informational materials for the implementation of commute trip reduction programs. Model plans and programs, training and informational materials shall be developed in cooperation with representatives of local governments, transit agencies, and employers.

(3) In carrying out this section the state energy office and department of transportation may contract with state-wide associations representing cities, towns, and counties to assist cities, towns, and counties in implementing commute trip reduction plans and programs. [1991 c 202 § 16.]

Captions not law—Effective date—Severability—1991 c 202:
See notes following RCW 47.50.010.

70.94.544 Transportation demand management—Use of funds. A portion of the funds made available for the purposes of this chapter shall be used to fund the commute trip reduction task force in carrying out the responsibilities of RCW 70.94.541, and the interagency technical assistance team, including the activities authorized under RCW 70.94.541(2), and to assist counties, cities, and towns implementing commute trip reduction plans. Funds shall be provided to the counties in proportion to the number of major employers and major worksites in each county. The counties shall provide funds to cities and towns within the county which are implementing commute trip reduction plans in proportion to the number of major employers and major worksites within the city or town. [1991 c 202 § 17.]

Captions not law—Effective date—Severability—1991 c 202:
See notes following RCW 47.50.010.

70.94.547 Transportation demand management—Intent—State leadership. The legislature hereby recognizes the state's crucial leadership role in establishing and implementing effective commute trip reduction programs. Therefore, it is the policy of the state that the department of general administration and other state agencies shall aggressively develop substantive programs to reduce commute trips by state employees. Implementation of these programs will reduce energy consumption, congestion in urban areas, and air and water pollution associated with automobile travel. [1991 c 202 § 18.]

Captions not law—Effective date—Severability—1991 c 202:
See notes following RCW 47.50.010.

70.94.551 Transportation demand management—State agency plan. (1) The director of general administration, with the concurrence of an interagency task force established for the purposes of this section, shall coordinate a commute trip reduction plan for state agencies which are phase 1 major employers by January 1, 1993. The task force shall include representatives of the state energy office, the departments of transportation and ecology and such other departments as the director of general administration determines to be

necessary to be generally representative of state agencies. The state agency plan shall be consistent with the requirements of RCW 70.94.527 and 70.94.531 and shall be developed in consultation with state employees, local and regional governments, local transit agencies, the business community, and other interested groups. The plan shall consider and recommend policies applicable to all state agencies including but not limited to policies regarding parking and parking charges, employee incentives for commuting by other than single-occupant automobiles, flexible and alternative work schedules, alternative worksites, and the use of state-owned vehicles for car and van pools. The plan shall also consider the costs and benefits to state agencies of achieving commute trip reductions and consider mechanisms for funding state agency commute trip reduction programs. The department shall, within thirty days, submit a summary of its plan along with certification of adoption to the commute trip reduction task force established under RCW 70.94.537.

(2) Not more than three months after the adoption of the commute trip reduction plan, each state agency shall, for each facility which is a major employer, develop a commute trip reduction program. The program shall be designed to meet the goals of the commute trip reduction plan of the county, city, or town or, if there is no local commute trip reduction plan, the state. The program shall be consistent with the policies of the state commute trip reduction plan and RCW 70.94.531. The agency shall submit a description of that program to the local jurisdiction implementing a commute trip reduction plan or, if there is no local commute trip reduction plan, to the department of general administration. The program shall be implemented not more than three months after submission to the department. Annual reports required in RCW 70.94.531(2)(c) shall be submitted to the local jurisdiction implementing a commute trip reduction plan and to the department of general administration. An agency which is not meeting the applicable commute trip reduction goals shall, to the extent possible, modify its program to comply with the recommendations of the local jurisdiction or the department of general administration.

(3) State agencies sharing a common location may develop and implement a joint commute trip reduction program or may delegate the development and implementation of the commute trip reduction program to the department of general administration.

(4) The department of general administration in consultation with the state technical assistance team shall review the initial commute trip reduction program of each state agency subject to the commute trip reduction plan for state agencies to determine if the program is likely to meet the applicable commute trip reduction goals and notify the agency of any deficiencies. If it is found that the program is not likely to meet the applicable commute trip reduction goals, the team will work with the agency to modify the program as necessary.

(5) For each agency subject to the state agency commute trip reduction plan, the department of general administration in consultation with the technical assistance

team shall annually review progress toward meeting the applicable commute trip reduction goals. If it appears an agency is not meeting or is not likely to meet the applicable commute trip reduction goals, the team shall work with the agency to make modifications to the commute trip reduction program.

(6) The department of general administration shall submit an annual progress report for state agencies subject to the state agency commute trip reduction plan to the commute trip reduction task force established under RCW 70.94.537. The report shall be due April 1, 1993, and each April 1 through 2000. The report shall report progress in attaining the applicable commute trip reduction goals for each commute trip reduction zone and shall highlight any problems being encountered in achieving the goals. The information shall be reported in a form established by the commute trip reduction task force. [1991 c 202 § 19.]

Captions not law—Effective date—Severability—1991 c 202:
See notes following RCW 47.50.010.

70.94.610 Burning used oil fuel in land-based facilities. (1) Except as provided in subsection (2) of this section, a person may not burn used oil as fuel in a land-based facility or in state waters unless the used oil meets the following standards:

- (a) Cadmium: 2 ppm maximum
- (b) Chromium: 10 ppm maximum
- (c) Lead: 100 ppm maximum
- (d) Arsenic: 5 ppm maximum
- (e) Total halogens: 1000 ppm maximum
- (f) Polychlorinated biphenyls: 2 ppm maximum
- (g) Ash: .1 percent maximum
- (h) Sulfur: 1.0 percent maximum
- (i) Flash point: 100 degrees Fahrenheit minimum.

(2) This section shall not apply to: (a) Used oil burned in space heaters if the space heater has a maximum heat output of not greater than 0.5 million btu's per hour or used oil burned in facilities permitted by the department or a local air pollution control authority; or (b) ocean-going vessels.

(3) This section shall not apply to persons in the business of collecting used oil from residences when under authorization by a city, county, or the utilities and transportation commission. [1991 c 319 § 311.]

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

70.94.650 Burning permits for weed abatement, instruction or agriculture activities—Issuance—Agricultural burning practices and research task force. (1) Any person who proposes to set fires in the course of

(a) weed abatement,
(b) instruction in methods of fire fighting (except forest fires), or

(c) 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, 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. 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 in which the applicant is engaged, or both. 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. An application for a permit to set fires in the course of agricultural burning for controlling diseases, insects, weed abatement or development of physiological conditions conducive to increased crop yield, shall be acted upon within seven days from the date such application is filed.

(2) Except as provided in RCW 70.94.780 permit fees shall be assessed for outdoor burning under this section and shall be collected by the department of ecology or the appropriate local air authority at the time the permit is issued. All fees collected shall be deposited in the air pollution control account created in RCW 70.94.015. Fees shall be set by rule by the permitting agency at the level determined by the task force created by subsection (4) of this section, but shall not exceed two dollars and fifty cents per acre to be burned. After fees are established by rule, any increases in such fees shall be limited to annual inflation adjustments as determined by the state office of the economic and revenue forecast council.

(3) Conservation districts and the Washington State University agricultural extension program in conjunction with the department shall develop public education material for the agricultural community identifying the health and environmental affects [effects] of agricultural outdoor burning and providing technical assistance in alternatives to agricultural outdoor burning.

(4) An agricultural burning practices and research task force shall be established under the direction of the department. The task force shall be composed of a representative from the department who shall serve as chair; one representative of eastern Washington local air authorities; three representatives of the agricultural community from different agricultural pursuits; one representative of the department of agriculture; two representatives from universities or colleges knowledgeable in agricultural issues; one representative of the public health or medical community; and one representative of the conservation districts. The task force shall identify best management practices for reducing air contaminant emissions from agricultural activities and provide such

information to the department and local air authorities. The task force shall determine the level of fees to be assessed by the permitting agency pursuant to subsection (2) of this section, based upon the level necessary to cover the costs of administering and enforcing the permit programs, to provide funds for research into alternative methods to reduce emissions from such burning, and to the extent possible be consistent with fees charged for such burning permits in neighboring states. The fee level shall provide, to the extent possible, for lesser fees for permittees who use best management practices to minimize air contaminant emissions. The task force shall identify research needs related to minimizing emissions from agricultural burning and alternatives to such burning. Further, the task force shall make recommendations to the department on priorities for spending funds provided through this chapter for research into alternative methods to reduce emissions from agricultural burning. [1991 c 199 § 408; 1971 ex.s. c 232 § 1.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.651 Burning permits for regeneration of rare and endangered plants; Indian ceremonies. Nothing contained in this chapter shall prohibit fires necessary: (1) To promote the regeneration of rare and endangered plants found within natural area preserves as identified under chapter 79.70 RCW; and (2) for Indian ceremonies or for the sending of smoke signals if part of a religious ritual. Permits issued for burning under this section shall be drafted to minimize emissions including denial of permission to burn during periods of adverse meteorological conditions. [1991 c 199 § 407.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.654 Delegation of permit issuance and enforcement to political subdivisions. Whenever the department of ecology shall find that any fire protection agency, county, or conservation district 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 and desirous of doing so, the department of ecology may delegate powers necessary for the issuance or enforcement, or both, of permits for any or all of the kinds of burning to the fire protection agency, county, or conservation district. Such delegation may be withdrawn by the department of ecology upon its finding that the fire protection agency, county, or conservation district is not effectively administering the permit program. [1991 c 199 § 409; 1973 1st ex.s. c 193 § 6.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.656 Open burning of grasses grown for seed—Alternatives—Studies—Deposit of permit fees in special grass seed burning account—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 one dollar 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 state treasury. 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.

The fee collected under this subsection shall constitute the research portion of fees required under RCW 70.94.650 for open burning of grass grown for seed.

(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. [1991 1st sp.s. c 13 § 28; 1991 c 199 § 413; 1990 c 113 § 1; 1985 c 57 § 69; 1973 1st ex.s. c 193 § 7.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Finding—1991 c 199: See note following RCW 70.94.011.

Effective date—1985 c 57: See note following RCW 18.04.105.
Grass burning research advisory committee: Chapter 43.21E RCW.

70.94.660 Burning permits for abating or prevention of forest fire hazards, management of ecosystems, instruction or silvicultural operations—Issuance. (1) The department of natural resources shall have the responsibility for issuing and regulating burning permits required by it relating to the following activities for the protection of life or property and/or for the public health, safety, and welfare:

- (a) Abating a forest fire hazard;
- (b) Prevention of a fire hazard;
- (c) Instruction of public officials in methods of forest fire fighting;
- (d) Any silvicultural operation to improve the forest lands of the state; and
- (e) Silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas.

(2) The department of natural resources shall not retain such authority, but it shall be the responsibility of the appropriate fire protection agency for permitting and regulating outdoor burning on lands where the department of natural resources does not have fire protection responsibility.

(3) Permit fees shall be assessed for silvicultural burning under the jurisdiction of the department of natural resources and collected by the department of natural resources as provided for in this section. All fees shall be deposited in the air pollution control account, created in RCW 70.94.015. The legislature shall appropriate to the department of natural resources funds from the air pollution control account to enforce and administer the program under RCW 70.94.665 and 70.94.660, 70.94.670, and 70.94.690. Fees shall be set by rule by the department of natural resources at the level necessary to cover the costs of the program after receiving recommendations on such fees from the public and the forest fire advisory board established by RCW 76.04.145. [1991 c 199 § 404; 1971 ex.s. c 232 § 2.]

Finding—1991 c 199: See note following RCW 70.94.011.

Burning permits, issuance, air pollution a factor: RCW 76.04.205.

Disposal of forest debris: RCW 76.04.650.

70.94.665 Silvicultural forest burning—Reduce state-wide emissions. (1) The department of natural resources shall administer a program to reduce state-wide emissions from silvicultural forest burning so as to achieve the following minimum objectives:

- (a) Twenty percent reduction by December 31, 1994 providing a ceiling for emissions until December 31, 2000; and
- (b) Fifty percent reduction by December 31, 2000 providing a ceiling for emissions thereafter.

Reductions shall be calculated from the average annual emissions level from calendar years 1985 to 1989, using the same methodology for both reduction and base year calculations.

(2) The department of natural resources, within twelve months after May 15, 1991, shall develop a plan, based upon the existing smoke management agreement

to carry out the programs as described in this section in the most efficient, cost-effective manner possible. The plan shall be developed in consultation with the department of ecology, public and private landowners engaged in silvicultural forest burning, and representatives of the public.

The plan shall recognize the variations in silvicultural forest burning including, but not limited to, a landowner's responsibility to abate an extreme fire hazard under chapter 76.04 RCW and other objectives of burning, including abating and preventing a fire hazard, geographic region, climate, elevation and slope, proximity to populated areas, and diversity of land ownership. The plan shall establish priorities that the department of natural resources shall use to allocate allowable emissions, including but not limited to, silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas. The plan shall also recognize the real costs of the emissions program and recommend equitable fees to cover the costs of the program.

The emission reductions in this section are to apply to all forest lands including those owned and managed by the United States. If the United States does not participate in implementing the plan, the departments of natural resources and ecology shall use all appropriate and available methods or enforcement powers to ensure participation.

The plan shall include a tracking system designed to measure the degree of progress toward the emission reductions goals set in this section. The department of natural resources shall report annually to the department of ecology and the legislature on the status of the plan, emission reductions and progress toward meeting the objectives specified in this section, and the goals of this chapter and chapter 76.04 RCW.

(3) If the December 31, 1994, emission reductions targets in this section are not met, the department of natural resources, in consultation with the department of ecology, shall use its authority granted in this chapter and chapter 76.04 RCW to immediately limit emissions from such burning to the 1994 target levels and limit silvicultural forest burning in subsequent years to achieve equal annual incremental reductions so as to achieve the December 31, 2000, target level. If, as a result of the program established in this section, the emission reductions are met in 1994, but are not met by December 31, 2000, the department of natural resources in consultation with the department of ecology shall immediately limit silvicultural forest burning to reduce emissions from such burning to the December 31, 2000, target level in all subsequent years. [1991 c 199 § 403.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.670 Burning permits for abating or prevention of forest fire hazards, management of ecosystems, 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 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 shall be established and published by the department of ecology which shall also establish a procedure for advising the department of natural resources when and where air contaminant levels exceed or threaten to exceed the ambient air standards over such critical areas. The air quality shall be quantitatively measured by the department of ecology or the appropriate local air pollution control authority at established monitoring stations over such designated areas. Further, such permitted burning shall not cause damage to public health or the environment. All permits issued under this section shall be subject to all applicable fees, permitting, penalty, and enforcement provisions of this chapter. The department of natural resources shall set forth smoke dispersal objectives designed consistent with this section to minimize any air pollution from such burning and the procedures necessary to meet those objectives.

The department of natural resources shall encourage more intense utilization in logging and alternative silviculture practices to reduce the need for burning. The department of natural resources shall, whenever practical, encourage landowners to develop and use alternative acceptable disposal methods subject to the following priorities: (1) Slash production minimization, (2) slash utilization, (3) nonburning disposal, (4) silvicultural burning. Such alternative methods shall be evaluated as to the relative impact on air, water, and land pollution, public health, and their financial feasibility.

The department of natural resources shall not issue burning permits and shall revoke previously issued permits at any time in any area where the department of ecology or local board has declared a stage of impaired air quality as defined in RCW 70.94.473. [1991 c 199 § 405; 1971 ex.s. c 232 § 3.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.680 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

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. The department of natural resources shall include any local authority's burning regulations with permits issued where applicable pursuant to RCW *70.94.740 through 70.94.775. The department shall develop agreements with all local authorities to coordinate regulations.

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. [1991 c 199 § 406; 1971 ex.s. c 232 § 5.]

*Reviser's note: RCW 70.94.740 was repealed by 1991 c 199 § 718.
Finding—1991 c 199: See note following RCW 70.94.011.

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 34.05 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 preplanned 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. The department shall not call a forecast episode prior to the department or an authority calling a first stage impaired air quality condition as provided by RCW 70.94.473(1)(b) or calling a single-stage impaired air quality condition as provided by RCW 70.94.473(2). "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. [1990 c 128 § 4; 1971 ex.s. c 194 § 2.]

70.94.740 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

70.94.743 Outdoor burning—Areas where prohibited—Silvicultural burning. (1) Consistent with the policy of the state to reduce outdoor burning to the greatest extent practical:

(a) Outdoor burning shall not be allowed in any area of the state where federal or state ambient air quality standards are exceeded for pollutants emitted by outdoor burning.

(b) Outdoor burning shall not be allowed in any urban growth area as defined by RCW 36.70A.030, or any city of the state having a population greater than ten thousand people if such cities are threatened to exceed state or federal air quality standards, and alternative disposal practices consistent with good solid waste management are reasonably available or practices eliminating production of organic refuse are reasonably available. In no event shall such burning be allowed after December 31, 2000.

(2) "Outdoor burning" means the combustion of material of any type in an open fire or in an outdoor container without providing for the control of combustion or the control of emissions from the combustion.

(3) This section shall not apply to silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas. [1991 c 199 § 402.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.745 Limited outdoor burning—Program. It shall be the responsibility and duty of the department of natural resources, department of ecology, department of agriculture, 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 alternate technology or methods of disposing of the organic refuse have been developed that are reasonably economical and less harmful to the environment. It is the policy of this state to foster and encourage development of alternate methods or technology for disposing of or reducing the amount of organic refuse. [1991 c 199 § 401; 1972 ex.s. c 136 § 2.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.750 Limited outdoor burning—Permits issued by political subdivisions—Types of fires permitted. The following outdoor fires described in this section may be burned subject to the provisions of this chapter and also subject to city ordinances, county resolutions, rules of fire districts and laws, and rules enforced by the department of natural resources if a permit has been issued by a fire protection agency, county, or conservation district:

(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 or her 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. [1991 c 199 § 412; 1972 ex.s. c 136 § 3.]

Finding—1991 c 199: See note following RCW 70.94.011.

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 that normally emits dense smoke or obnoxious odors. Agricultural heating devices that 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 or impaired air

quality condition as defined in RCW 70.94.473. [1991 c 199 § 410; 1974 ex.s. c 164 § 1; 1973 2nd ex.s. c 11 § 1; 1973 1st ex.s. c 193 § 9.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.780 Outdoor burning—Permits issued by political subdivisions. In addition to any other powers granted to them by law, the fire protection agency, county, or conservation district issuing burning permits shall regulate or prohibit outdoor burning as necessary to prevent or abate the nuisances caused by such burning. No fire protection agency, county, or conservation district may issue a burning permit in an area where the department or local board has declared any stage of impaired air quality per RCW 70.94.473 or any stage of an air pollution episode. All burning permits issued shall be subject to all applicable fee, permitting, penalty, and enforcement provisions of this chapter. The permitted burning shall not cause damage to public health or the environment.

Any entity issuing a permit under this section may charge a fee at the level necessary to recover the costs of administering and enforcing the permit program. [1991 c 199 § 411; 1973 1st ex.s. c 193 § 10.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.810 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

70.94.815 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

70.94.825 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

70.94.860 Department of ecology may accept delegation of programs. The department of ecology may accept delegation of programs as provided for in the federal clean air act. Subject to federal approval, the department may, in turn, delegate such programs to the local authority with jurisdiction in a given area. [1991 c 199 § 312; 1984 c 164 § 2.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.870 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

70.94.875 Evaluation of information on acid deposition in Pacific Northwest—Establishment of critical levels—Notification of legislature. The department of ecology, in consultation with the appropriate committees of the house of representatives and of the senate, shall:

(1) Continue evaluation of information and research on acid deposition in the Pacific Northwest region;

(2) Establish critical levels of acid deposition and lake, stream, and soil acidification; and

(3) Notify the legislature if acid deposition or lake, stream, and soil acidification reaches the levels established under subsection (2) of this section. [1991 c 199 § 313; 1985 c 456 § 3.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.904 Effective dates—1991 c 199. Sections 602 and 603 of this act shall take effect July 1, 1992. Sections 202 through 209 of this act shall take effect January 1, 1993. Sections 210 and 505 of this act shall take effect January 1, 1992.

The remainder of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately. [1991 c 199 § 717.]

70.94.905 Severability—1991 c 199. 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. [1991 c 199 § 719.]

70.94.906 Captions not law. Captions and headings as used in this act constitute no part of the law. [1991 c 199 § 720.]

70.94.960 Clean fuel matching grants for public transit, vehicle mechanics, and refueling infrastructure. The department may disburse matching grants from funds provided by the legislature from the air pollution control account, created in RCW 70.94.015, to units of local government to partially offset the additional cost of purchasing "clean fuel" and/or operating "clean-fuel vehicles" provided that such vehicles are used for public transit. Publicly owned school buses are considered public transit for the purposes of this section. The department may also disburse grants to vocational-technical institutes for the purpose of establishing programs to certify clean-fuel vehicle mechanics. The department may also distribute grants to the state energy office for the purpose of furthering the establishment of clean fuel refueling infrastructure. [1991 c 199 § 218.]

Finding—1991 c 199: See note following RCW 70.94.011.

Clean fuel: RCW 70.120.210.

Refueling: RCW 80.28.280.

State vehicles: RCW 43.19.637.

70.94.970 Chlorofluorocarbons—Ozone—Refrigerants regulated. (Effective July 1, 1992.) (1) Regulated refrigerant means a class I or class II substance as listed in Title VI of section 602 of the federal clean air act amendments of November 15, 1990.

(2) A person who services or repairs or disposes of a motor vehicle air conditioning system; commercial or industrial air conditioning, heating, or refrigeration system; or consumer appliance shall use refrigerant extraction equipment to recover regulated refrigerant

that would otherwise be released into the atmosphere. This subsection does not apply to off-road commercial equipment.

(3) Upon request, the department shall provide information and assistance to persons interested in collecting, transporting, or recycling regulated refrigerants.

(4) The willful release of regulated refrigerant from a source listed in subsection (2) of this section is prohibited. [1991 c 199 § 602.]

Finding—1991 c 199: "The legislature finds that:

(1) The release of chlorofluorocarbons and other ozone-depleting chemicals into the atmosphere contributes to the destruction of stratospheric ozone and threatens plant and animal life with harmful overexposure to ultraviolet radiation;

(2) The technology and equipment to extract and recover chlorofluorocarbons and other ozone-depleting chemicals from air conditioners, refrigerators, and other appliances are available;

(3) A number of nonessential consumer products contain ozone-depleting chemicals; and

(4) Unnecessary releases of chlorofluorocarbons and other ozone-depleting chemicals from these sources should be eliminated." [1991 c 199 § 601.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.980 Refrigerants—Unlawful acts. (Effective July 1, 1992.) No person may sell, offer for sale, or purchase any of the following:

(1) A regulated refrigerant in a container designed for consumer recharge of a motor vehicle air conditioning system or consumer appliance during repair or service. This subsection does not apply to a regulated refrigerant purchased for the recharge of the air conditioning system of off-road commercial or agricultural equipment and sold or offered for sale at an establishment which specializes in the sale of off-road commercial or agricultural equipment or parts or service for such equipment;

(2) Nonessential consumer products that contain chlorofluorocarbons or other ozone-depleting chemicals, and for which substitutes are readily available. Products affected under this subsection shall include, but are not limited to, party streamers, tire inflators, air horns, noise makers, and chlorofluorocarbon-containing cleaning sprays designed for noncommercial or nonindustrial cleaning of electronic or photographic equipment. [1991 c 199 § 603.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.990 Refrigerants—Rules—Enforcement provisions, limitations. The department shall adopt rules to implement RCW 70.94.970 and 70.94.980. Rules shall include but not be limited to minimum performance specifications for refrigerant extraction equipment, as well as procedures for enforcing RCW 70.94.970 and 70.94.980.

Enforcement provisions adopted by the department shall not include penalties or fines in areas where equipment to collect or recycle regulated refrigerants is not readily available. [1991 c 199 § 604.]

Finding—1991 c 199: See note following RCW 70.94.011.

Chapter 70.95

SOLID WASTE MANAGEMENT—REDUCTION
AND RECYCLING

Sections	
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70.95.030 Definitions. As used in this chapter, unless the context indicates otherwise:

- (1) "City" means every incorporated city and town.
- (2) "Commission" means the utilities and transportation commission.
- (3) "Committee" means the state solid waste advisory committee.
- (4) "Department" means the department of ecology.
- (5) "Director" means the director of the department of ecology.
- (6) "Disposal site" means the location where any final treatment, utilization, processing, or deposit of solid waste occurs.
- (7) "Energy recovery" means a process operating under federal and state environmental laws and regulations for converting solid waste into usable energy and for reducing the volume of solid waste.
- (8) "Functional standards" means criteria for solid waste handling expressed in terms of expected performance or solid waste handling functions.
- (9) "Incineration" means a process of reducing the volume of solid waste operating under federal and state environmental laws and regulations by use of an enclosed device using controlled flame combustion.
- (10) "Jurisdictional health department" means city, county, city-county, or district public health department.
- (11) "Landfill" means a disposal facility or part of a facility at which solid waste is placed in or on land and which is not a land treatment facility.
- (12) "Local government" means a city, town, or county.
- (13) "Multiple family residence" means any structure housing two or more dwelling units.
- (14) "Person" means individual, firm, association, co-partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.
- (15) "Recyclable materials" means those solid wastes that are separated for recycling or reuse, such as papers, metals, and glass, that are identified as recyclable material pursuant to a local comprehensive solid waste plan. Prior to the adoption of the local comprehensive solid

waste plan, adopted pursuant to RCW 70.95.110(2), local governments may identify recyclable materials by ordinance from July 23, 1989.

(16) "Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration.

(17) "Residence" means the regular dwelling place of an individual or individuals.

(18) "Solid waste" or "wastes" 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 recyclable materials.

(19) "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 solid wastes or the conversion of the energy in solid wastes to more useful forms or combinations thereof.

(20) "Source separation" means the separation of different kinds of solid waste at the place where the waste originates.

(21) "Vehicle" includes every device physically capable of being moved upon a public or private highway, road, street, or watercourse and in, upon, or by which any person or property is or may be transported or drawn upon a public or private highway, road, street, or watercourse, except devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(22) "Waste reduction" means reducing the amount or toxicity of waste generated or reusing materials. [1991 c 298 § 2; 1989 c 431 § 2; 1985 c 345 § 3; 1984 c 123 § 2; 1975-'76 2nd ex.s. c 41 § 3; 1970 ex.s. c 62 § 60; 1969 ex.s. c 134 § 3.]

Finding—1991 c 298: "The legislature finds that curbside recycling services should be provided in multiple family residences. The county and city comprehensive solid waste management plans should include provisions for such service." [1991 c 298 § 1.]

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—Members—Meetings—Travel expenses—"Governor's award of excellence." (1) 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 and dangerous waste handling, resource recovery, and recycling, and shall supply recommendations concerning methods by which existing solid and dangerous waste handling, resource recovery, and recycling practices and the laws authorizing them may be supplemented and improved.

(2) The committee shall consist of at least eleven members, including the assistant director for waste management programs within the department. The director shall appoint members with due regard to the interests of the public, local government, tribes, agriculture, industry, public health, recycling industries, solid waste collection industries, and resource recovery industries. The term of appointment shall be determined

by the director. The committee shall elect its own chair 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.

(3) The committee shall each year recommend to the governor a recipient for a "governor's award of excellence" which the governor shall award for outstanding achievement by an industry, company, or individual in the area of hazardous waste or solid waste management. [1991 c 319 § 401; 1987 c 115 § 1; 1982 c 108 § 1; 1977 c 10 § 1. Prior: 1975-'76 2nd ex.s. c 41 § 9; 1975-'76 2nd ex.s. c 34 § 160; 1969 ex.s. c 134 § 4.]

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

Toxic metals—Report—1991 c 319: See note following RCW 70.95G.005.

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

70.95.090 County and city comprehensive solid waste management plans—Contents. Each county and city comprehensive 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 or her place of business and the area covered by the franchise;

(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.

(6) A comprehensive waste reduction and recycling element that, in accordance with the priorities established in RCW 70.95.010, provides programs that (a) reduce the amount of waste generated, (b) provide incentives and mechanisms for source separation, and (c) establish recycling opportunities for the source separated waste.

(7) The waste reduction and recycling element shall include the following:

(a) Waste reduction strategies;

(b) Source separation strategies, including:

(i) Programs for the collection of source separated materials from residences in urban and rural areas. In urban areas, these programs shall include collection of source separated recyclable materials from single and multiple family residences, unless the department approves an alternative program, according to the criteria in the planning guidelines. Such criteria shall include: Anticipated recovery rates and levels of public participation, availability of environmentally sound disposal capacity, access to markets for recyclable materials, unreasonable cost impacts on the ratepayer over the six-year planning period, utilization of environmentally sound waste reduction and recycling technologies, and other factors as appropriate. In rural areas, these programs shall include but not be limited to drop-off boxes, buy-back centers, or a combination of both, at each solid waste transfer, processing, or disposal site, or at locations convenient to the residents of the county. The drop-off boxes and buy-back centers may be owned or operated by public, nonprofit, or private persons;

(ii) Programs to monitor the collection of source separated waste at nonresidential sites where there is sufficient density to sustain a program;

(iii) Programs to collect yard waste, if the county or city submitting the plan finds that there are adequate markets or capacity for composted yard waste within or near the service area to consume the majority of the material collected; and

(iv) Programs to educate and promote the concepts of waste reduction and recycling;

(c) Recycling strategies, including a description of markets for recyclables, a review of waste generation trends, a description of waste composition, a discussion and description of existing programs and any additional programs needed to assist public and private sector recycling, and an implementation schedule for the designation of specific materials to be collected for recycling, and for the provision of recycling collection services;

(d) Other information the county or city submitting the plan determines is necessary.

(8) An assessment of the plan's impact on the costs of solid waste collection. The assessment shall be prepared in conformance with guidelines established by the utilities and transportation commission. The commission shall cooperate with the Washington state association of

counties and the association of Washington cities in establishing such guidelines.

(9) A review of potential areas that meet the criteria as outlined in RCW 70.95.165. [1991 c 298 § 3; 1989 c 431 § 3; 1984 c 123 § 5; 1971 ex.s. c 293 § 1; 1969 ex.s. c 134 § 9.]

Finding—1991 c 298: See note following RCW 70.95.030.

Certain provisions not to detract from utilities and transportation commission powers, duties, and functions: RCW 80.01.300.

70.95.110 Maintenance of plans—Review, revisions—Implementation of source separation programs.

(1) The comprehensive county solid waste management plans and any comprehensive city solid waste management 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. 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 management plan shall be submitted to the department.

Each plan shall be reviewed and revised within five years of July 1, 1984, and thereafter shall be reviewed, and revised if necessary according to the schedule provided in subsection (2) of this section.

(2) Cities and counties preparing solid waste management plans shall submit the waste reduction and recycling element required in RCW 70.95.090 and any revisions to other elements of its comprehensive solid waste management plan to the department no later than:

(a) July 1, 1991, for class one areas: PROVIDED, That portions relating to multiple family residences shall be submitted no later than July 1, 1992;

(b) July 1, 1992, for class two areas; and

(c) July 1, 1994, for class three areas.

Thereafter, each plan shall be reviewed and revised, if necessary, at least every five years. Nothing in *this act shall prohibit local governments from submitting a plan prior to the dates listed in this subsection.

(3) The classes of areas are defined as follows:

(a) Class one areas are the counties of Spokane, Snohomish, King, Pierce, and Kitsap and all the cities therein.

(b) Class two areas are all other counties located west of the crest of the Cascade mountains and all the cities therein.

(c) Class three areas are the counties east of the crest of the Cascade mountains and all the cities therein, except for Spokane county.

(4) Cities and counties shall begin implementing the programs to collect source separated materials no later than one year following the adoption and approval of the waste reduction and recycling element and these programs shall be fully implemented within two years of approval. [1991 c 298 § 4; 1989 c 431 § 5; 1984 c 123 § 7; 1969 ex.s. c 134 § 11.]

***Reviser's note:** For codification of "this act" [1989 c 431], see Codification Tables, Volume 0.

Finding—1991 c 298: See note following RCW 70.95.030.

70.95.167 Private businesses involvement in source separated materials—Local solid waste advisory committee to examine.

(1) Each local solid waste advisory committee shall conduct one or more meetings for the purpose of determining how local private recycling and solid waste collection businesses may participate in the development and implementation of programs to collect source separated materials from residences, and to process and market materials collected for recycling. The meetings shall include local private recycling businesses, private solid waste collection companies operating within the jurisdiction, and the local solid waste planning agencies. The meetings shall be held during the development of the waste reduction and recycling element or no later than one year prior to the date that a jurisdiction is required [to] submit the element under RCW 70.95.110(2).

(2) The meeting requirement under subsection (1) of this section shall apply whenever a city or county develops or amends the waste reduction and recycling element required under this chapter. Jurisdictions having approved waste reduction and recycling elements or having initiated a process for the selection of a service provider as of May 21, 1991, do not have to comply with the requirements of subsection (1) of this section until the next revisions to the waste reduction and recycling element are made or required.

(3) After the waste reduction and recycling element is approved by the local legislative authority but before it is submitted to the department for approval, the local solid waste advisory committee shall hold at least one additional meeting to review the element.

(4) For the purpose of this section, "private recycling business" means any private for-profit or private not-for-profit business that engages in the processing and marketing of recyclable materials. [1991 c 319 § 402.]

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

70.95.235 Diversion of recyclable material—Penalty.

(1) No person may divert to personal use any recyclable material placed in a container as part of a recycling program, without the consent of the generator of such recyclable material or the solid waste collection company operating under the authority of a town, city, county, or the utilities and transportation commission, and no person may divert to commercial use any recyclable material placed in a container as part of a recycling program, without the consent of the person owning or operating such container.

(2) A violation of subsection (1) of this section is a class 1 civil infraction under chapter 7.80 RCW. Each violation of this section shall be a separate infraction. [1991 c 319 § 407.]

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

70.95.720 Closure of energy recovery and incineration facilities—Recordkeeping requirements. The department shall require energy recovery and incineration facilities to retain records of monitoring and operation data for a minimum of ten years after permanent closure of the facility. [1990 c 114 § 4.]

Severability—1990 c 114: See RCW 70.95E.900.

70.95.800 Solid waste management account. The solid waste management account is created in the state treasury. Moneys in the account may only be spent after appropriation. Expenditures from the account may only be used to carry out the purposes of *this act. [1991 1st sp.s. c 13 § 73; 1989 c 431 § 90.]

***Reviser's note:** For codification of "this act" [1989 c 431], see Codification Tables, Volume 0.

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Chapter 70.95C WASTE REDUCTION

Sections

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70.95C.010 Legislative findings. The legislature finds that land disposal and incineration of solid and hazardous waste can be both harmful to the environment and costly to those who must dispose of the waste. In order to address this problem in the most cost-effective and environmentally sound manner, and to implement the highest waste management priority as articulated in RCW 70.95.010 and 70.105.150, public and private efforts should focus on reducing the generation of waste. Waste reduction can be achieved by encouraging voluntary efforts to redesign industrial, commercial, production, and other processes to result in the reduction or elimination of waste byproducts and to maximize the in-process reuse or reclamation of valuable spent material.

In the interest of protecting the public health, safety, and the environment, the legislature declares that it is the policy of the state of Washington to encourage reduction in the use of hazardous substances and reduction in the generation of hazardous waste whenever economically and technically practicable.

The legislature finds that hazardous wastes are generated by numerous different sources including, but not limited to, large and small business, households, and

state and local government. The legislature further finds that a goal against which efforts at waste reduction may be measured is essential for an effective hazardous waste reduction program. The Pacific Northwest hazardous waste advisory council has endorsed a goal of reducing, through hazardous substance use reduction and waste reduction techniques, the generation of hazardous waste by fifty percent by 1995. The legislature adopts this as a policy goal for the state of Washington. The legislature recognizes that many individual businesses have already reduced the generation of hazardous waste through appropriate hazardous waste reduction techniques. The legislature also recognizes that there are some basic industrial processes which by their nature have limited potential for significantly reducing the use of certain raw materials or substantially reducing the generation of hazardous wastes. Therefore, the goal of reducing hazardous waste generation by fifty percent cannot be applied as a regulatory requirement. [1990 c 114 § 1; 1988 c 177 § 1.]

Severability—1990 c 114: See RCW 70.95E.900.

70.95C.020 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Department" means the department of ecology.

(2) "Director" means the director of the department of ecology or the director's designee.

(3) "Dangerous waste" shall have the same definition as set forth in RCW 70.105.010(5) and shall specifically include those wastes designated as dangerous by rules adopted pursuant to chapter 70.105 RCW.

(4) "EPA/state identification number" means the number assigned by the EPA (environmental protection agency) or by the department of ecology to each generator and/or transporter and treatment, storage, and/or disposal facility.

(5) "Extremely hazardous waste" shall have the same definition as set forth in RCW 70.105.010(6) and shall specifically include those wastes designated as extremely hazardous by rules adopted pursuant to chapter 70.105 RCW.

(6) "Fee" means the annual hazardous waste fees imposed under RCW 70.95E.020 and 70.95E.030.

(7) "Generate" means any act or process which produces hazardous waste or first causes a hazardous waste to become subject to regulation.

(8) "Hazardous substance" means any hazardous substance listed as a hazardous substance as of March 21, 1990, pursuant to section 313 of Title III of the Superfund Amendments and Reauthorization Act, any other substance determined by the director by rule to present a threat to human health or the environment, and all ozone depleting compounds as defined by the Montreal Protocol of October 1987.

(9)(a) "Hazardous substance use reduction" means the reduction, avoidance, or elimination of the use or production of hazardous substances without creating substantial new risks to human health or the environment.

(b) "Hazardous substance use reduction" includes proportionate changes in the usage of hazardous substances as the usage of a hazardous substance or hazardous substances changes as a result of production changes or other business changes.

(10) "Hazardous substance user" means any facility required to report under section 313 of Title III of the Superfund Amendments and Reauthorization Act, except for those facilities which only distribute or use fertilizers or pesticides intended for commercial agricultural applications.

(11) "Hazardous waste" means and includes all dangerous and extremely hazardous wastes, but does not include radioactive wastes or a substance composed of both radioactive and hazardous components and does not include any hazardous waste generated as a result of a remedial action under state or federal law.

(12) "Hazardous waste generator" means any person generating hazardous waste regulated by the department.

(13) "Office" means the office of waste reduction.

(14) "Plan" means the plan provided for in RCW 70.95C.200.

(15) "Person" means an individual, trust, firm, joint stock company, partnership, association, state, public or private or municipal corporation, commission, political subdivision of a state, interstate body, the federal government, including any agency or officer thereof, and any Indian tribe or authorized tribal organization.

(16) "Process" means all industrial, commercial, production, and other processes that result in the generation of waste.

(17) "Recycled for beneficial use" means the use of hazardous waste, either before or after reclamation, as a substitute for a commercial product or raw material, but does not include: (a) Use constituting disposal; (b) incineration; or (c) use as a fuel.

(18) "Recycling" means reusing waste materials and extracting valuable materials from a waste stream. Recycling does not include burning for energy recovery.

(19) "Treatment" means the physical, chemical, or biological processing of waste to render it completely innocuous, produce a recyclable by-product, reduce toxicity, or substantially reduce the volume of material requiring disposal as described in the priorities established in RCW 70.105.150. Treatment does not include incineration.

(20) "Used oil" means (a) lubricating fluids that have been removed from an engine crankcase, transmission, gearbox, hydraulic device, or differential of an automobile, bus, truck, vessel, plane, heavy equipment, or machinery powered by an internal combustion engine; (b) any oil that has been refined from crude oil, used, and as a result of use, has been contaminated with physical or chemical impurities; and (c) any oil that has been refined from crude oil and, as a consequence of extended storage, spillage, or contamination, is no longer useful to the original purchaser. "Used oil" does not include used oil to which hazardous wastes have been added.

(21) "Waste" means any solid waste as defined under RCW 70.95.030, any hazardous waste, any air contaminant as defined under RCW 70.94.030, and any organic or inorganic matter that shall cause or tend to cause water pollution as defined under RCW 90.48.020.

(22) "Waste generator" means any individual, business, government agency, or any other organization that generates waste.

(23) "Waste reduction" means all in-plant practices that reduce, avoid, or eliminate the generation of wastes or the toxicity of wastes, prior to generation, without creating substantial new risks to human health or the environment. As used in RCW 70.95C.200 through 70.95C.240, "waste reduction" refers to hazardous waste only. [1991 c 319 § 313; 1990 c 114 § 2; 1988 c 177 § 2.]

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

Severability—1990 c 114: See RCW 70.95E.900.

70.95C.030 Office of waste reduction—Duties. (1) There is established in the department an office of waste reduction. The office shall use its authorities to encourage the voluntary reduction of hazardous substance usage and waste generation by waste generators and hazardous substance users. The office shall prepare and submit a quarterly progress report to the director and the director shall submit an annual progress report to the appropriate environmental standing committees of the legislature beginning December 31, 1988.

(2) The office shall be the coordinating center for all state agency programs that provide technical assistance to waste generators and hazardous substance users and shall serve as the state's lead agency and promoter for such programs. In addition to this coordinating function, the office shall encourage hazardous substance use reduction and waste reduction by:

(a) Providing for the rendering of advice and consultation to waste generators and hazardous substance users on hazardous substance use reduction and waste reduction techniques, including assistance in preparation of plans provided for in RCW 70.95C.200;

(b) Sponsoring or co-sponsoring with public or private organizations technical workshops and seminars on waste reduction and hazardous substance use reduction;

(c) Administering a waste reduction and hazardous substance use reduction data base and hotline providing comprehensive referral services to waste generators and hazardous substance users;

(d) Administering a waste reduction and hazardous substance use reduction research and development program;

(e) Coordinating a waste reduction and hazardous substance use reduction public education program that includes the utilization of existing publications from public and private sources, as well as publishing necessary new materials on waste reduction;

(f) Recommending to institutions of higher education in the state courses and curricula in areas related to waste reduction and hazardous substance use reduction; and

(g) Operating an intern program in cooperation with institutions of higher education and other outside resources to provide technical assistance on hazardous substance use reduction and waste reduction techniques and to carry out research projects as needed within the office. [1990 c 114 § 3; 1988 c 177 § 3.]

Severability—1990 c 114: See RCW 70.95E.900.

70.95C.040 Waste reduction and hazardous substance use reduction consultation program. (1) The office shall establish a waste reduction and hazardous substance use reduction consultation program to be coordinated with other state waste reduction and hazardous substance use reduction consultation programs.

(2) The director may grant a request by any waste generator or hazardous substance user for advice and consultation on waste reduction and hazardous substance use reduction techniques and assistance in preparation or modification of a plan, executive summary, or annual progress report, or assistance in the implementation of a plan required by RCW 70.95C.200. Pursuant to a request from a facility such as a business, governmental entity, or other process site in the state, the director may visit the facility making the request for the purposes of observing hazardous substance use and the waste-generating process, obtaining information relevant to waste reduction and hazardous substance use reduction, rendering advice, and making recommendations. No such visit may be regarded as an inspection or investigation, and no notices or citations may be issued, or civil penalty be assessed, upon such a visit. A representative of the director providing advisory or consultative services under this section may not have any enforcement authority.

(3) Consultation and advice given under this section shall be limited to the matters specified in the request and shall include specific techniques of waste reduction and hazardous substance use reduction tailored to the relevant process. In granting any request for advisory or consultative services, the director may provide for an alternative means of affording consultation and advice other than on-site consultation.

(4) Any proprietary information obtained by the director while carrying out the duties required under this section shall remain confidential and shall not be publicized or become part of the data base established under RCW 70.95C.060 without written permission of the requesting party. [1990 c 114 § 5; 1988 c 177 § 4.]

Severability—1990 c 114: See RCW 70.95E.900.

70.95C.120 Waste reduction and recycling awards program in K-12 public schools. The office of waste reduction shall develop, in consultation with the superintendent of public instruction, an awards program to achieve waste reduction and recycling in the public schools, grades kindergarten through high school. The office shall develop guidelines for program development and implementation. Each public school shall implement a waste reduction and recycling program conforming to guidelines developed by the office.

For the purpose of granting awards, the office may group schools into not more than three classes, based upon student population, distance to markets for recyclable materials, and other criteria, as deemed appropriate by the office. Except as otherwise provided, five or more awards shall be granted to each of the three classes. Each award shall be a sum of not less than two thousand dollars nor more than five thousand dollars. Awards shall be granted each year to the schools that achieve the greatest levels of waste reduction and recycling. A single award of not less than five thousand dollars shall be presented to the school having the best recycling program as measured by the total amount of materials recycled, including materials generated outside of the school. A single award of not less than five thousand dollars shall be presented to the school having the best waste reduction program as determined by the office.

The superintendent of public instruction shall distribute guidelines and other materials developed by the office to implement programs to reduce and recycle waste generated in administrative offices, classrooms, laboratories, cafeterias, and maintenance operations. [1991 c 319 § 114; 1989 c 431 § 54.]

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

Severability—Section captions not law—1989 c 431: See RCW 70.95.901 and 70.95.902.

70.95C.200 Hazardous waste generators and users—Voluntary reduction plan. (1) Each hazardous waste generator who generates more than two thousand six hundred forty pounds of hazardous waste per year and each hazardous substance user, except for those facilities that are primarily permitted treatment, storage, and disposal facilities or recycling facilities, shall prepare a plan for the voluntary reduction of the use of hazardous substances and the generation of hazardous wastes. Hazardous waste generated and recycled for beneficial use, including initial amount of hazardous substances introduced into a process and subsequently recycled for beneficial use, shall not be used in the calculation of hazardous waste generated for purposes of this section. The department may develop reporting requirements, consistent with existing reporting, to establish recycling for beneficial use under this section. Used oil to be re-refined or burned for energy or heat recovery shall not be used in the calculation of hazardous wastes generated for purposes of this section, and is not required to be addressed by plans prepared under this section. A person with multiple interrelated facilities where the processes in the facilities are substantially similar, may prepare a single plan covering one or more of those facilities.

(2) Each user or generator required to write a plan is encouraged to advise its employees of the planning process and solicit comments or suggestions from its employees on hazardous substance use and waste reduction options.

(3) The department shall adopt by April 1, 1991, rules for preparation of plans. The rules shall require the

plan to address the following options, according to the following order of priorities: Hazardous substance use reduction, waste reduction, recycling, and treatment. In the planning process, first consideration shall be given to hazardous substance use reduction and waste reduction options. Consideration shall be given next to recycling options. Recycling options may be considered only after hazardous substance use reduction options and waste reduction options have been thoroughly researched and shown to be inappropriate. Treatment options may be considered only after hazardous substance use reduction, waste reduction, and recycling options have been thoroughly researched and shown to be inappropriate. Documentation of the research shall be available to the department upon request. The rules shall also require the plans to discuss the hazardous substance use reduction, waste reduction, and closed loop recycling options separately from other recycling and treatment options. All plans shall be written in conformance with the format prescribed in the rules adopted under this section. The rules shall require the plans to include, but not be limited to:

(a) A written policy articulating management and corporate support for the plan and a commitment to implementing planned activities and achieving established goals;

(b) The plan scope and objectives;

(c) Analysis of current hazardous substance use and hazardous waste generation, and a description of current hazardous substance use reduction, waste reduction, recycling, and treatment activities;

(d) An identification of further hazardous substance use reduction, waste reduction, recycling, and treatment opportunities, and an analysis of the amount of hazardous substance use reduction and waste reduction that would be achieved, and the costs. The analysis of options shall demonstrate that the priorities provided for in this section have been followed;

(e) A selection of options to be implemented in accordance with the priorities established in this section;

(f) An analysis of impediments to implementing the options. Impediments that shall be considered acceptable include, but are not limited to: Adverse impacts on product quality, legal or contractual obligations, economic practicality, and technical feasibility;

(g) A written policy stating that in implementing the selected options, whenever technically and economically practicable, risks will not be shifted from one part of a process, environmental media, or product to another;

(h) Specific performance goals in each of the following categories, expressed in numeric terms:

(i) Hazardous substances to be reduced or eliminated from use;

(ii) Wastes to be reduced or eliminated through waste reduction techniques;

(iii) Materials or wastes to be recycled; and

(iv) Wastes to be treated;

If the establishment of numeric performance goals is not practicable, the performance goals shall include a clearly stated list of objectives designed to lead to the establishment of numeric goals as soon as is practicable.

Goals shall be set for a five-year period from the first reporting date;

(i) A description of how the wastes that are not recycled or treated and the residues from recycling and treatment processes are managed may be included in the plan;

(j) Hazardous substance use and hazardous waste accounting systems that identify hazardous substance use and waste management costs and factor in liability, compliance, and oversight costs;

(k) A financial description of the plan;

(l) Personnel training and employee involvement programs;

(m) A five-year plan implementation schedule;

(n) Documentation of hazardous substance use reduction and waste reduction efforts completed before or in progress at the time of the first reporting date; and

(o) An executive summary of the plan, which shall include, but not be limited to:

(i) The information required by (c), (e), (h), and (n) of this subsection; and

(ii) A summary of the information required by (d) and (f) of this subsection.

(4) Upon completion of a plan, the owner, chief executive officer, or other person with the authority to commit management to the plan shall sign and submit an executive summary of the plan to the department.

(5) Plans shall be completed and executive summaries submitted in accordance with the following schedule:

(a) Hazardous waste generators who generated more than fifty thousand pounds of hazardous waste in calendar year 1991 and hazardous substance users who were required to report in 1991, by September 1, 1992;

(b) Hazardous waste generators who generated between seven thousand and fifty thousand pounds of hazardous waste in calendar year 1992 and hazardous substance users who were required to report for the first time in 1992, by September 1, 1993;

(c) Hazardous waste generators who generated between two thousand six hundred forty and seven thousand pounds of hazardous waste in 1993 and hazardous substance users who were required to report for the first time in 1993, by September 1, 1994;

(d) Hazardous waste generators who have not been required to complete a plan on or prior to September 1, 1994, must complete a plan by September 1 of the year following the first year that they generate more than two thousand six hundred forty pounds of hazardous waste; and

(e) Hazardous substance users who have not been required to complete a plan on or prior to September 1, 1994, must complete a plan by September 1 of the year following the first year that they are required to report under section 313 of Title III of the Superfund Amendments and Reauthorization Act.

(6) Annual progress reports, including a description of the progress made toward achieving the specific performance goals established in the plan, shall be prepared and submitted to the department in accordance with rules developed under this section. Upon the request of

two or more users or generators belonging to similar industrial classifications, the department may aggregate data contained in their annual progress reports for the purpose of developing a public record.

(7) Every five years, each plan shall be updated, and a new executive summary shall be submitted to the department. [1991 c 319 § 314; 1990 c 114 § 6.]

Severability—Part beadings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

Severability—1990 c 114: See RCW 70.95E.900.

70.95C.210 Voluntary reduction plan—Exemption.

A person required to prepare a plan under RCW 70.95C.200 because of the quantity of hazardous waste generated may petition the director to be excused from this requirement. The person must demonstrate to the satisfaction of the director that the quantity of hazardous waste generated was due to unique circumstances not likely to be repeated and that the person is unlikely to generate sufficient hazardous waste to require a plan in the next five years. [1990 c 114 § 7.]

Severability—1990 c 114: See RCW 70.95E.900.

70.95C.220 Voluntary reduction plan, executive summary, or progress report—Department review.

(1) The department may review a plan, executive summary, or an annual progress report to determine whether the plan, executive summary, or annual progress report is adequate pursuant to the rules developed under this section and with the provisions of RCW 70.95C.200. In determining the adequacy of any plan, executive summary, or annual progress report, the department shall base its determination solely on whether the plan, executive summary, or annual progress report is complete and prepared in accordance with the provisions of RCW 70.95C.200.

(2) Plans developed under RCW 70.95C.200 shall be retained at the facility of the hazardous substance user or hazardous waste generator preparing a plan. The plan is not a public record under the public disclosure laws of the state of Washington contained in chapter 42.17 RCW. A user or generator required to prepare a plan shall permit the director or a representative of the director to review the plan to determine its adequacy. No visit made by the director or a representative of the director to a facility for the purposes of this subsection may be regarded as an inspection or investigation, and no notices or citations may be issued, nor any civil penalty assessed, upon such a visit.

(3) If a hazardous substance user or hazardous waste generator fails to complete an adequate plan, executive summary, or annual progress report, the department shall notify the user or generator of the inadequacy, identifying specific deficiencies. For the purposes of this section, a deficiency may include failure to develop a plan, failure to submit an executive summary pursuant to the schedule provided in RCW 70.95C.200(5), and failure to submit an annual progress report pursuant to the rules developed under RCW 70.95C.200(6). The department shall specify a reasonable time frame, of not less than ninety days, within which the user or generator

shall complete a modified plan, executive summary, or annual progress report addressing the specified deficiencies.

(4) If the department determines that a modified plan, executive summary, or annual progress report is inadequate, the department may, within its discretion, either require further modification or enter an order pursuant to subsection (5)(a) of this section.

(5)(a) If, after having received a list of specified deficiencies from the department, a hazardous substance user or hazardous waste generator required to prepare a plan fails to complete modification of a plan, executive summary, or annual progress report within the time period specified by the department, the department may enter an order pursuant to chapter 34.05 RCW finding the user or generator not in compliance with the requirements of RCW 70.95C.200. When the order is final, the department shall notify the department of revenue to charge a penalty fee. The penalty fee shall be the greater of one thousand dollars or three times the amount of the user's or generator's previous year's fee, in addition to the current year's fee. If no fee was assessed the previous year, the penalty shall be the greater of one thousand dollars or three times the amount of the current year's fee. The penalty assessed under this subsection shall be collected each year after the year for which the penalty was assessed until an adequate plan or executive summary is completed.

(b) If a hazardous substance user or hazardous waste generator required to prepare a plan fails to complete an adequate plan, executive summary, or annual progress report after the department has levied against the user or generator the penalty provided in (a) of this subsection, the user or generator shall be required to pay a surcharge to the department whenever the user or generator disposes of a hazardous waste at any hazardous waste incinerator or hazardous waste landfill facility located in Washington state, until a plan, executive summary, or annual progress report is completed and determined to be adequate by the department. The surcharge shall be equal to three times the fee charged for disposal. The department shall furnish the incinerator and landfill facilities in this state with a list of environmental protection agency/state identification numbers of the hazardous waste generators that are not in compliance with the requirements of RCW 70.95C.200. [1990 c 114 § 8.]

Severability—1990 c 114: See RCW 70.95E.900.

70.95C.230 Appeal of department order or surcharge.

A user or generator may appeal from a department order or a surcharge under RCW 70.95C.220 to the pollution control hearings board pursuant to chapter 43.21B RCW. [1990 c 114 § 9.]

Severability—1990 c 114: See RCW 70.95E.900.

70.95C.240 Public inspection of plans, summaries, progress reports. (1) The department shall make available for public inspection any executive summary or annual progress report submitted to the department. Any

hazardous substance user or hazardous waste generator required to prepare an executive summary or annual progress report who believes that disclosure of any information contained in the executive summary or annual progress report may adversely affect the competitive position of the user or generator may request the department pursuant to RCW 43.21A.160 to delete from the public record those portions of the executive summary or annual progress report that may affect the user's or generator's competitive position. The department shall not disclose any information contained in an executive summary or annual progress report pending a determination of whether the department will delete any information contained in the report from the public record.

(2) Any ten persons residing within ten miles of a hazardous substance user or hazardous waste generator required to prepare a plan may file with the department a petition requesting the department to examine a plan to determine its adequacy. The department shall report its determination of adequacy to the petitioners and to the user or generator within a reasonable time. The department may deny a petition if the department has within the previous year determined the plan of the user or generator named in the petition to be adequate.

(3) The department shall maintain a record of each plan, executive summary, or annual progress report it reviews, and a list of all plans, executive summaries, or annual progress reports the department has determined to be inadequate, including descriptions of corrective actions taken. This information shall be made available to the public. [1990 c 114 § 10.]

Severability—1990 c 114: See RCW 70.95E.900.

Chapter 70.95E

HAZARDOUS WASTE FEES

Sections

70.95E.010	Definitions.
70.95E.020	Hazardous waste generation—Fee.
70.95E.030	Voluntary reduction plan—Fees.
70.95E.040	Fees—Generally.
70.95E.050	Department of revenue—Administration of fees.
70.95E.060	Failure to pay fee—Penalty.
70.95E.070	Review of fees—Report.
70.95E.080	Hazardous waste assistance account.
70.95E.090	Technical assistance and compliance education—Grants.
70.95E.100	Exclusion from chapter.
70.95E.900	Severability—1990 c 114.

70.95E.010 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Dangerous waste" shall have the same definition as set forth in RCW 70.105.010(5) and shall include those wastes designated as dangerous by rules adopted pursuant to chapter 70.105 RCW.

(2) "Department" means the department of ecology.

(3) "EPA/state identification number" means the number assigned by the EPA (environmental protection

agency) or by the department of ecology to each generator and/or transporter and treatment, storage, and/or disposal facility.

(4) "Extremely hazardous waste" shall have the same definition as set forth in RCW 70.105.010(6) and shall specifically include those wastes designated as extremely hazardous by rules adopted pursuant to chapter 70.105 RCW.

(5) "Fee" means the annual fees imposed under this chapter.

(6) "Generate" means any act or process which produces hazardous waste or first causes a hazardous waste to become subject to regulation.

(7) "Hazardous waste" means and includes all dangerous and extremely hazardous wastes but for the purposes of this chapter excludes all radioactive wastes or substances composed of both radioactive and hazardous components.

(8) "Known generators" means persons that have notified the department, have received an EPA/state identification number and generate quantities of hazardous wastes regulated under chapter 70.105 RCW.

(9) "Person" means an individual, trust, firm, joint stock company, partnership, association, state, public or private or municipal corporation, commission, political subdivision of a state, interstate body, the federal government including any agency or officer thereof, and any Indian tribe or authorized tribal organization.

(10) "Potential generators" means all persons whose primary business activities are identified by the department to be likely to generate any quantity of hazardous wastes.

(11) "Price deflator" means the United States department of commerce bureau of economic analysis, "Implicit Price Deflator for Gross National Product" for "Government Purchases of Goods and Services," for "State and Local Government."

(12) "Recycled for beneficial use" means the use of hazardous waste, either before or after reclamation, as a substitute for a commercial product or raw material, but does not include: (a) Use constituting disposal; (b) incineration; or (c) use as a fuel.

(13) "Waste generation site" means any geographical area that has been assigned an EPA/state identification number. [1990 c 114 § 11.]

70.95E.020 Hazardous waste generation—Fee. A fee is imposed for the privilege of generating or potentially generating hazardous waste in the state. The annual amount of the fee shall be thirty-five dollars upon every known generator or potential generator doing business in Washington in the current calendar year or any part thereof. This fee shall be collected by the department of revenue. A potential generator shall be exempt from the fee imposed under this section if the potential generator is entitled to the exemption in RCW 82.04.300 in the current calendar year. The department shall, subject to appropriation, use the funds collected from the fees assessed in this subsection to support the activities of the office of waste reduction as specified in RCW 70.95C.030. The fee imposed pursuant to this

section shall be first due on July 31, 1990, for any generator or potential generator operating in Washington from March 21, 1990, to December 31, 1990, or any part thereof. [1990 c 114 § 12.]

70.95E.030 Voluntary reduction plan—Fees. (1) Hazardous waste generators and hazardous substance users required to prepare plans under RCW 70.95C.200 shall pay an additional fee to support implementation of RCW 70.95C.200 and 70.95C.040. These fees are to be used by the department, subject to appropriation, for plan review, technical assistance to facilities that are required to prepare plans, other activities related to plan development and implementation, and associated indirect costs. The total fees collected under this subsection shall not exceed the department's costs of implementing RCW 70.95C.200 and 70.95C.040 and shall not exceed one million dollars per year. The annual fee for a facility shall not exceed ten thousand dollars per year. Any facility that generates less than two thousand six hundred forty pounds of hazardous waste per waste generation site in the previous calendar year shall be exempt from the fee imposed by this section. The annual fee for a facility generating at least two thousand six hundred forty pounds but not more than four thousand pounds of hazardous waste per waste generation site in the previous calendar year shall not exceed fifty dollars. A person that develops a plan covering more than one interrelated facility as provided for in RCW 70.95C.200 shall be assessed fees only for the number of plans prepared. The department shall adopt a fee schedule by rule after consultation with typical affected businesses and other interested parties. Hazardous waste generated and recycled for beneficial use, including initial amount of hazardous substances introduced into a process and subsequently recycled for beneficial use, shall not be used in the calculations of hazardous waste generated for purposes of this section.

(2) Fees imposed by this section shall be first due on July 1, 1991, for facilities that are required to prepare plans in 1992, on July 1, 1992, for facilities that are required to prepare plans in 1993, and on July 1, 1993, for facilities that are required to prepare plans in 1994. [1990 c 114 § 13.]

70.95E.040 Fees—Generally. On an annual basis, the department shall adjust the fees provided for in RCW 70.95E.020 and 70.95E.030, including the maximum annual fee, and maximum total fees, by conducting the calculation in subsection (1) of this section and taking the actions set forth in subsection (2) of this section:

(1) In November of each year, the fees, annual fee, and maximum total fees imposed in RCW 70.95E.020 and 70.95E.030, or as subsequently adjusted by this section, shall be multiplied by a factor equal to the most current quarterly "price deflator" available, divided by the "price deflator" used in the numerator the previous year. However, the "price deflator" used in the denominator for the first adjustment shall be defined by the second quarter "price deflator" for 1990.

(2) Each year by March 1 the fee schedule, as adjusted in subsection (1) of this section will be published. The department will round the published fees to the nearest dollar. [1990 c 114 § 14.]

70.95E.050 Department of revenue—Administration of fees. In administration of this chapter for the enforcement and collection of the fees due and owing under this chapter, the department of revenue is authorized to apply the provisions of chapter 82.32 RCW, except that the provisions of RCW 82.32.050 and 82.32.090 shall not apply. [1990 c 114 § 15.]

70.95E.060 Failure to pay fee—Penalty. If a known or potential generator fails to pay all or any part of a fee imposed under this chapter, the department of revenue shall charge a penalty of three times the amount of the unpaid fee. The department of revenue shall waive any penalty in accordance with RCW 82.32.105. [1990 c 114 § 16.]

70.95E.070 Review of fees—Report. The legislative budget committee in 1994 shall review the fees provided for in chapter 70.95E RCW and report its findings to the legislature not later than July 1, 1995. [1990 c 114 § 17.]

70.95E.080 Hazardous waste assistance account. The hazardous waste assistance account is hereby created in the state treasury. The following moneys shall be deposited into the hazardous waste assistance account:

(1) Those revenues which are raised by the fees imposed under RCW 70.95E.020 and 70.95E.030;

(2) Penalties and surcharges collected under chapter 70.95C RCW and this chapter; and

(3) Any other moneys appropriated or transferred to the account by the legislature. Moneys in the hazardous waste assistance account may be spent only for the purposes of this chapter following legislative appropriation. [1991 1st sp.s. c 13 § 75; 1990 c 114 § 18.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

70.95E.090 Technical assistance and compliance education—Grants. The department may use funds in the hazardous waste assistance account to provide technical assistance and compliance education assistance to hazardous substance users and waste generators, to provide grants to local governments, and for administration of this chapter. The department of revenue shall be appropriated a percentage amount of the total fees collected, not to exceed two percent of the total fees collected, for administration and collection expenses incurred by the department of revenue.

Technical assistance may include the activities authorized under chapter 70.95C RCW and RCW 70.105.170 to encourage hazardous waste reduction and hazardous use reduction and the assistance provided for by RCW 70.105.100(2).

Compliance education may include the activities authorized under RCW 70.105.100(2) to train local

agency officials and to inform hazardous substance users and hazardous waste generators and owners and operators of hazardous waste management facilities of the requirements of chapter 70.105 RCW and related federal laws and regulations.

Grants to local governments shall be used for small quantity generator technical assistance and compliance education components of their moderate risk waste plans as required by RCW 70.105.220. [1990 c 114 § 19.]

70.95E.100 Exclusion from chapter. Nothing in this chapter relates to radioactive wastes or substances composed of both radioactive and hazardous components, and the department is precluded from using the funds of the hazardous waste assistance account for the regulation and control of such wastes. [1990 c 114 § 20.]

70.95E.900 Severability—1990 c 114. 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. [1990 c 114 § 23.]

Chapter 70.95F LABELING OF PLASTICS

Sections

70.95F.010	Definitions.
70.95F.020	Labeling requirements—Plastic industry standards.
70.95F.030	Violations, penalty.
70.95F.900	Severability—1991 c 319.
70.95F.901	Part headings not law—1991 c 319.

70.95F.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Container," unless otherwise specified, refers to "rigid plastic container" or "plastic bottle" as those terms are defined in this section.

(2) "Distributors" means those persons engaged in the distribution of packaged goods for sale in the state of Washington, including manufacturers, wholesalers, and retailers.

(3) "Label" means a molded, imprinted, or raised symbol on or near the bottom of a plastic container or bottle.

(4) "Person" means an individual, sole proprietor, partnership, association, or other legal entity.

(5) "Plastic" means a material made of polymeric organic compounds and additives that can be shaped by flow.

(6) "Plastic bottle" means a plastic container intended for single use that has a neck that is smaller than the body of the container, accepts a screw-type, snap cap, or other closure and has a capacity of sixteen fluid ounces or more, but less than five gallons.

(7) "Rigid plastic container" means a formed or molded container, other than a bottle, intended for single use, composed predominantly of plastic resin, and having

a relatively inflexible finite shape or form with a capacity of eight ounces or more but less than five gallons. [1991 c 319 § 103.]

70.95F.020 Labeling requirements—Plastic industry standards. (1) The provisions of this section and any rules adopted under this section shall be interpreted to conform with nation-wide plastics industry standards.

(2) Except as provided in RCW 70.95F.030(2), after January 1, 1992, no person may distribute, sell, or offer for sale in this state a plastic bottle or rigid plastic container unless the container is labeled with a code identifying the appropriate resin type used to produce the structure of the container. The code shall consist of a number placed within three triangulated arrows and letters placed below the triangle of arrows. The triangulated arrows shall be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The pointer (arrowhead) of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle, formed by the three arrows curved at their midpoints shall depict a clockwise path around the code number. The numbers and letters used shall be as follows:

- (a) 1. = PETE (polyethylene terephthalate)
- (b) 2. = HDPE (high density polyethylene)
- (c) 3. = V (vinyl)
- (d) 4. = LDPE (low density polyethylene)
- (e) 5. = PP (polypropylene)
- (f) 6. = PS (polystyrene)
- (g) 7. = OTHER

[1991 c 319 § 104.]

70.95F.030 Violations, penalty. (1) A person who, after written notice from the department, violates RCW 70.95F.020 is subject to a civil penalty of fifty dollars for each violation up to a maximum of five hundred dollars and may be enjoined from continuing violations. Each distribution constitutes a separate offense.

(2) Retailers and distributors shall have two years from May 21, 1991, to clear current inventory, delivered or received and held in their possession as of May 21, 1991. [1991 c 319 § 105.]

70.95F.900 Severability—1991 c 319. 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. [1991 c 319 § 411.]

70.95F.901 Part headings not law—1991 c 319. Part headings as used in this act do not constitute any part of the law. [1991 c 319 § 409.]

Chapter 70.95G
PACKAGES CONTAINING METALS

Sections

70.95G.005	Finding.
70.95G.010	Definitions.
70.95G.020	Concentration levels.
70.95G.030	Exemptions.
70.95G.040	Certificate of compliance.
70.95G.050	Certificate of compliance—Public access.
70.95G.060	Prohibition of sale of package.
70.95G.900	Severability—Part headings not law—1991 c 319.

70.95G.005 Finding. The legislature finds and declares that:

(1) The management of solid waste can pose a wide range of hazards to public health and safety and to the environment;

(2) Packaging comprises a significant percentage of the overall solid waste stream;

(3) The presence of heavy metals in packaging is a part of the total concern in light of their likely presence in emissions or ash when packaging is incinerated, or in leachate when packaging is landfilled;

(4) Lead, mercury, cadmium, and hexavalent chromium, on the basis of available scientific and medical evidence, are of particular concern;

(5) The intent of this chapter is to achieve a reduction in toxicity without impeding or discouraging the expanded use of postconsumer materials in the production of packaging and its components. [1991 c 319 § 106.]

Report to legislature—1991 c 319: "By July 1, 1993, the solid waste advisory committee created under chapter 70.95 RCW shall report to the appropriate standing committees of the legislature on the need to further reduce toxic metals from packaging. The report shall contain recommendations to add other toxic substances contained in packaging to the list set forth in this chapter, including but not limited to mutagens, carcinogens, and teratogens, in order to further reduce the toxicity of packaging waste, and shall contain a recommendation regarding imposition of penalty for violation of section 108 of this act." [1991 c 319 § 113.]

70.95G.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Package" means a container providing a means of marketing, protecting, or handling a product and shall include a unit package, an intermediate package, and a shipping container. "Package" also means and includes unsealed receptacles such as carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags, and tubs.

(2) "Manufacturer" means a person, firm, or corporation that applies a package to a product for distribution or sale.

(3) "Packaging component" means an individual assembled part of a package such as, but not limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, and labels. [1991 c 319 § 107.]

70.95G.020 Concentration levels. The sum of the concentration levels of lead, cadmium, mercury, and

hexavalent chromium present in any product, package, or packaging component shall not exceed the following:

(1) Six hundred parts per million by weight effective July 1, 1993;

(2) Two hundred fifty parts per million by weight effective July 1, 1994; and

(3) One hundred parts per million by weight effective July 1, 1995 after May 21, 1991.

This section shall apply only to lead, cadmium, mercury, and hexavalent chromium that has been intentionally introduced as an element during manufacturing or distribution. [1991 c 319 § 108.]

70.95G.030 Exemptions. All packages and packaging components shall be subject to this chapter except the following:

(1) Those packages or package components with a code indicating date of manufacture that were manufactured prior to May 21, 1991;

(2) Those packages or packaging components that have been purchased by, delivered to, or are possessed by a retailer on or before twenty-four months following May 21, 1991, to permit opportunity to clear existing inventory of the proscribed packaging material;

(3) Those packages or packaging components to which lead, cadmium, mercury, or hexavalent chromium have been added in the manufacturing, forming, printing, or distribution process in order to comply with health or safety requirements of federal law or for which there is no feasible alternative; or

(4) Those packages and packaging components that would not exceed the maximum contaminant levels set forth in RCW 70.95G.020(1) but for the addition of postconsumer materials; and provided that the exemption for this subsection shall expire six years after May 21, 1991. [1991 c 319 § 109.]

70.95G.040 Certificate of compliance. By July 1, 1993, a certificate of compliance stating that a package or packaging component is in compliance with the requirements of this chapter shall be developed by its manufacturer. If compliance is achieved under the exemption or exemptions provided in RCW 70.95G.030 (3) or (4), the certificate shall state the specific basis upon which the exemption is claimed. The certificate of compliance shall be signed by an authorized official of the manufacturing company. The certificate of compliance shall be kept on file by the manufacturer for as long as the package or packaging component is in use, and for three years from the date of the last sale or distribution by the manufacturer. Certificates of compliance, or copies thereof, shall be furnished to the department of ecology upon request within sixty days. If manufacturers are required under any other state statute to provide a certificate of compliance, one certificate may be developed containing all required information.

If the manufacturer or supplier of the package or packaging component reformulates or creates a new package or packaging component, the manufacturer

shall develop an amended or new certificate of compliance for the reformulated or new package or packaging component. [1991 c 319 § 110.]

70.95G.050 Certificate of compliance—Public access. Requests from a member of the public for any certificate of compliance shall be:

- (1) Made in writing to the department of ecology;
- (2) Made specific as to package or packaging component information requested; and
- (3) Responded to by the department of ecology within ninety days. [1991 c 319 § 111.]

70.95G.060 Prohibition of sale of package. The department of ecology may prohibit the sale of any package for which a manufacturer has failed to respond to a request by the department for a certificate of compliance within the allotted period of time pursuant to RCW 70.95G.040. [1991 c 319 § 112.]

70.95G.900 Severability—Part headings not law—1991 c 319. See RCW 70.95F.900 and 70.95F.901.

Chapter 70.95H

CLEAN WASHINGTON CENTER

Sections

70.95H.005	Finding.
70.95H.007	Center created.
70.95H.010	Purpose—Market development defined.
70.95H.020	Policy board.
70.95H.030	Duties and responsibilities.
70.95H.040	Authority.
70.95H.050	Funding.
70.95H.800	Clean Washington account.
70.95H.900	Termination.
70.95H.901	Captions not law.
70.95H.902	Severability—Part headings not law—1991 c 319.

70.95H.005 Finding. (1) The legislature finds that:

(a) Recycling conserves energy and landfill space, provides jobs and valuable feedstock materials to industry, and promotes health and environmental protection;

(b) Seventy-eight percent of the citizens of the state actively participate in recycling programs and Washington currently has the highest recycling rate in the nation;

(c) The current supply of many recycled commodities far exceeds the demand for such commodities;

(d) Many local governments and private entities cumulatively affect, and are affected by, the market for recycled commodities but have limited jurisdiction and cannot adequately address the problems of market development that are complex, wide-ranging, and regional in nature; and

(e) The private sector has the greatest capacity for creating and expanding markets for recycled commodities, and the development of private markets for recycled commodities is in the public interest.

(2) It is therefore the policy of the state to create a single entity to be known as the clean Washington center

to develop new, and expand existing, markets for recycled commodities. [1991 c 319 § 201.]

Funding—1991 c 319: "There is established the task force on recycling funding. The task force shall consist of fourteen members as follows: (1) Two members of the house committee on environmental affairs appointed by the chair of that committee with one member from each of the two caucuses; (2) two members of the senate committee on environment and natural resources appointed by the chair of that committee with one member from each of the two caucuses; (3) seven members representing manufacturers, wholesalers, retailers, cities, counties, solid waste collection companies, and an environmental organization appointed jointly by the chairs of the house committee on environmental affairs and the senate committee on environment and natural resources; and (4) three members representing the departments of ecology, trade and economic development, and revenue appointed by their respective directors. The agency representatives shall be nonvoting except for the election of the chair, which shall be made by a simple majority vote of all members.

The task force shall study long-term funding mechanisms and develop specific funding recommendations for the clean Washington center. The task force shall report its findings and recommended legislation to fund the clean Washington center to the appropriate standing committees of the legislature no later than December 1, 1991. The task force shall also study and make recommendations on long-term funding for integrated systems to reduce, collect, recycle, and dispose of materials.

This section shall expire January 1, 1993." [1991 c 319 § 115.]

70.95H.007 Center created. There is created the clean Washington center within the department of trade and economic development. As used in this chapter, "center" means the clean Washington center. [1991 c 319 § 202.]

70.95H.010 Purpose—Market development defined. The purpose of the center is to provide or facilitate business assistance, basic and applied research and development, marketing, public education, and policy analysis in furthering the development of markets for recycled products. As used in this chapter, market development consists of public and private activities that are used to overcome impediments preventing full use of secondary materials diverted from the waste stream, and that encourage and expand use of those materials and subsequent products. In fulfilling this mission the center shall primarily direct its services to businesses that transform or remanufacture waste materials into usable or marketable materials or products for use other than landfill disposal or incineration. [1991 c 319 § 203.]

70.95H.020 Policy board. (1) The center's activities shall be conducted with the assistance of a policy board. Except as otherwise provided, policy board members shall be appointed by the directors of the department of trade and economic development and department of ecology as follows:

(a) Two representatives of the legislature, one appointed by the speaker of the house of representatives and one appointed by the president of the senate;

(b) One member to represent cities;

(c) One member to represent counties;

(d) Five private sector members to represent the end users and marketers of postconsumer recovered materials, including one member to represent recycling businesses;

(e) The directors of the departments of trade and economic development and ecology shall represent the executive branch as nonvoting members; and

(f) Nonvoting, temporary appointments to the board can be made by the chair where specific expertise is needed.

(2) The initial appointments of the five private sector members will be two members with three-year terms and three members with two-year terms. Thereafter, members shall serve two-year renewable terms. Vacancies shall be filled by the chair with majority consent from the members.

(3) Members of the board, exclusive of those representing the legislative or executive branches, shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(4) The board shall meet at least quarterly.

(5) The chair shall be elected from among the members by a simple majority vote.

(6) The board may adopt and exercise bylaws for the regulation of its business for the purposes of this chapter. [1991 c 319 § 204.]

70.95H.030 Duties and responsibilities. The center shall:

(1) Provide targeted business assistance to recycling businesses, including:

- (a) Development of business plans;
- (b) Market research and planning information;
- (c) Access to financing programs;
- (d) Referral and information on market conditions;

and

(e) Information on new technology and product development;

(2) Negotiate voluntary agreements with manufacturers to increase the use of recycled materials in product development;

(3) Support and provide research and development to stimulate and commercialize new and existing technologies and products using recycled materials;

(4) Undertake an integrated, comprehensive education effort directed to recycling businesses to promote processing, manufacturing, and purchase of recycled products, including:

(a) Provide information to recycling businesses on the availability and benefits of using recycled materials;

(b) Provide information and referral services on recycled material markets;

(c) Provide information on new research and technologies that may be used by local businesses and governments; and

(d) Participate in projects to demonstrate new market uses or applications for recycled products;

(5) Assist the departments of ecology and general administration in the development of consistent definitions and standards on recycled content, product performance, and availability;

(6) Undertake studies on the unmet capital needs of reprocessing and manufacturing firms using recycled materials;

(7) Undertake and participating in marketing promotions for the purposes of achieving expanded market penetration for recycled content products;

(8) Coordinate with the department of ecology to ensure that the education programs of both are mutually reinforcing, with the center acting as the lead entity with respect to recycling businesses, and the department as the lead entity with respect to the general public and retailers;

(9) Develop an annual work plan. The plan shall describe actions and recommendations for developing markets for commodities comprising a significant percentage of the waste stream and having potential for use as an industrial or commercial feedstock. The initial plan shall address, but not be limited to, mixed waste paper, waste tires, yard and food waste, and plastics; and

(10) Represent the state in regional and national market development issues. [1991 c 319 § 205.]

70.95H.040 Authority. In order to carry out its responsibilities under this chapter, the center may:

(1) Receive such gifts, grants, funds, fees, and endowments, in trust or otherwise, for the use and benefit of the purposes of the center. The center may expend the same or any income therefrom according to the terms of the gifts, grants, or endowments;

(2) Initiate, conduct, or contract for studies and searches relating to market development for recyclable materials, including but not limited to applied research, technology transfer, and pilot demonstration projects;

(3) Obtain and disseminate information relating to market development for recyclable materials from other state and local agencies;

(4) Enter into, amend, and terminate contracts with individuals, corporations, trade associations, and research institutions for the purposes of this chapter;

(5) Provide grants to local governments or other public institutions to further the development of recycling markets;

(6) Provide business and marketing assistance to public and private sector entities within the state; and

(7) Evaluate, analyze, and make recommendations on state policies that may affect markets for recyclable materials. [1991 c 319 § 206.]

70.95H.050 Funding. The center shall solicit financial contributions and support from manufacturing industries and other private sector sources, foundations, and grants from governmental sources to assist in conducting its activities. It may also use separately appropriated funds of the department of trade and economic development for the center's activities. [1991 c 319 § 207.]

Funding—1991 c 319: See note following RCW 70.95H.005.

70.95H.800 Clean Washington account. There is created an account within the state treasury to be known as the clean Washington account. Moneys deposited in the clean Washington account shall be subject to appropriation and shall be used for the administration and

implementation of the clean Washington center established under RCW 70.95H.020. [1991 c 319 § 212.]

Reviser's note: 1991 c 319 directed that this section be added to chapter 70.93 RCW. The placement appears inappropriate and the section has been codified as part of chapter 70.95H RCW.

70.95H.900 Termination. The center shall terminate on June 30, 1997. [1991 c 319 § 209.]

70.95H.901 Captions not law. Section headings as used in this chapter do not constitute any part of the law. [1991 c 319 § 211.]

70.95H.902 Severability—Part headings not law—1991 c 319. See RCW 70.95F.900 and 70.95F.901.

Chapter 70.95I USED OIL RECYCLING

Sections

70.95I.005	Finding.
70.95I.010	Definitions.
70.95I.020	Used oil recycling element.
70.95I.030	Used oil recycling element guidelines—Waiver— State-wide goals.
70.95I.040	Oil sellers—Education responsibility—Penalty.
70.95I.050	State-wide education.
70.95I.060	Disposal of used oil—Penalty.
70.95I.070	Used oil transporter and processor requirements— Civil penalties.
70.95I.080	Above-ground used oil collection tanks.
70.95I.900	Captions not law.
70.95I.901	Short title.
70.95I.902	Severability—Part headings not law—1991 c 319.

70.95I.005 Finding. (1) The legislature finds that:

(a) Millions of gallons of used oil are generated each year in this state, and used oil is a valuable petroleum resource that can be recycled;

(b) The improper collection, transportation, recycling, use, or disposal of used oil contributes to the pollution of air, water, and land, and endangers public health and welfare;

(c) The private sector is a vital resource in the collection and recycling of used oil and should be involved in its collection and recycling whenever practicable.

(2) In light of the harmful consequences of improper disposal and use of used oil, and its value as a resource, the legislature declares that the collection, recycling, and reuse of used oil is in the public interest.

(3) The department, when appropriate, should promote the rerefining of used oil in its grants, public education, regulatory, and other programs. [1991 c 319 § 301.]

Hazardous waste: Chapter 70.95C RCW.

70.95I.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Rerefining used oil" means the reclaiming of base lube stock from used oil for use again in the production of lube stock. Rerefining used oil does not mean combustion or landfilling.

(2) "Used oil" means (a) lubricating fluids that have been removed from an engine crankcase, transmission, gearbox, hydraulic device, or differential of an automobile, bus, truck, vessel, plane, heavy equipment, or machinery powered by an internal combustion engine; (b) any oil that has been refined from crude oil, used, and as a result of use, has been contaminated with physical or chemical impurities; and (c) any oil that has been refined from crude oil and, as a consequence of extended storage, spillage, or contamination, is no longer useful to the original purchaser. "Used oil" does not include used oil to which hazardous wastes have been added.

(3) "Public used oil collection site" means a site where a used oil collection tank has been placed for the purpose of collecting household generated used oil. "Public used oil collection site" also means a vehicle designed or operated to collect used oil from the public.

(4) "Lubricating oil" means any oil designed for use in, or maintenance of, a vehicle, including, but not limited to, motor oil, gear oil, and hydraulic oil. "Lubricating oil" does not mean petroleum hydrocarbons with a flash point below one hundred degrees Centigrade.

(5) "Vehicle" includes every device physically capable of being moved upon a public or private highway, road, street, watercourse, or trail, and in, upon, or by which any person or property is or may be transported or drawn upon a public or private highway, road, street, watercourse, or trail, except devices moved by human or animal power.

(6) "Department" means the department of ecology.

(7) "Local government" means a city or county developing a local hazardous waste plan under RCW 70.105.220. [1991 c 319 § 302.]

70.95I.020 Used oil recycling element. (1) Each local government and its local hazardous waste plan under RCW 70.105.220 is required to include a used oil recycling element. This element shall include:

(a) A plan to reach the local goals for household used oil recycling established by the local government and the department under RCW 70.95I.030. The plan shall, to the maximum extent possible, incorporate voluntary agreements with the private sector and state agencies to provide sites for the collection of used oil. Where provided, the plan shall also incorporate residential collection of used oil;

(b) A plan for enforcing the sign and container ordinances required by RCW 70.95I.040;

(c) A plan for public education on used oil recycling; and

(d) An estimate of funding needed to implement the requirements of this chapter. This estimate shall include a budget reserve for disposal of contaminated oil detected at any public used oil collection site administered by the local government.

(2) By July 1, 1993, each local government or combination of contiguous local governments shall submit its

used oil recycling element to the department. The department shall approve or disapprove the used oil recycling element by January 1, 1994, or within ninety days of submission, whichever is later. The department shall approve or disapprove the used oil recycling element if it determines that the element is consistent with this chapter and the guidelines developed by the department under RCW 70.95I.030.

(3) Each local government, or combination of contiguous local governments, shall submit an annual statement to the department describing the number of used oil collection sites and the quantity of household used oil recycled for the jurisdiction during the previous calendar year. The first statement shall be due April 1, 1994. Subsequent statements shall be due April 1st of each year.

Nothing in this section shall be construed to require a city or county to construct or operate a public used oil collection site. [1991 c 319 § 303.]

70.95I.030 Used oil recycling element guidelines—Waiver—State-wide goals. (1) By July 1, 1992, the department shall, in consultation with local governments, prepare guidelines for the used oil recycling elements required by RCW 70.95I.020. The guidelines shall:

(a) Require development of local collection and rerefining goals for household used oil for each entity preparing a used oil recycling element under RCW 70.95I.020;

(b) Require local government to recommend the number of used oil collection sites needed to meet the local goals. The department shall establish criteria regarding minimum levels of used oil collection sites;

(c) Require local government to identify locations suitable as public used oil collection sites as described under RCW 70.95I.020(1)(a).

(2) The department may waive all or part of the specific requirements of RCW 70.95I.020 if a local government demonstrates to the satisfaction of the department that the objectives of this chapter have been met.

(3) The department may prepare and implement a used oil recycling plan for any local government failing to complete the used oil recycling element of the plan.

(4) The department shall develop state-wide collection and rerefining goals for household used oil for each calendar year beginning with calendar year 1994. Goals shall be based on the estimated state-wide collection and rerefining rate for calendar year 1993, and shall increase each year until calendar year 1996, when the rate shall be eighty percent.

(5) By July 1, 1993, the department shall prepare guidelines establishing state-wide equipment and operating standards for public used oil collection sites. Standards shall:

(a) Allow the use of used oil collection igloos and other types of portable used oil collection tanks;

(b) Prohibit the disposal of nonhousehold-generated used oil;

(c) Limit the amount of used oil deposited to five gallons per household per day;

(d) Ensure adequate protection against leaks and spills; and

(e) Include other requirements deemed appropriate by the department. [1991 c 319 § 304.]

70.95I.040 Oil sellers—Education responsibility—Penalty. (1) A person annually selling one thousand or more gallons of lubricating oil to ultimate consumers for use or installation off the premises, or five hundred or more vehicle oil filters to ultimate consumers for use or installation off the premises within a city or county having an approved used oil recycling element, shall:

(a) Post and maintain at or near the point of sale, durable and legible signs informing the public of the importance of used oil recycling and how and where used oil may be properly recycled; and

(b) Provide for sale at or near the display location of the lubricating oil or vehicle oil filters, household used oil recycling containers. The department shall design and print the signs required by this section, and shall make them available to local governments and retail outlets.

(2) A person, who, after notice, violates this section is guilty of a misdemeanor and on conviction is subject to a fine not to exceed one thousand dollars.

(3) The department is responsible for notifying retailers subject to this section.

(4) A city or county may adopt household used oil recycling container standards in order to ensure compatibility with local recycling programs.

(5) Each local government preparing a used oil recycling element of a local hazardous waste plan pursuant to RCW 70.95I.020 shall adopt ordinances within its jurisdiction to enforce subsections (1) and (4) of this section. [1991 c 319 § 305.]

70.95I.050 State-wide education. The department shall conduct a public education program to inform the public of the needs for and benefits of collecting and recycling used oil in order to conserve resources and protect the environment. As part of this program, the department shall:

(1) Establish and maintain a state-wide list of public used oil collection sites, and a list of all persons coordinating local government used oil programs;

(2) Establish a state-wide media campaign describing used oil recycling;

(3) Assist local governments in providing public education and awareness programs concerning used oil by providing technical assistance and education materials; and

(4) Encourage the establishment of voluntary used oil collection and recycling programs, including public-private partnerships, and provide technical assistance to persons organizing such programs. [1991 c 319 § 306.]

70.95I.060 Disposal of used oil—Penalty. (1) Effective January 1, 1992, the use of used oil for dust suppression or weed abatement is prohibited.

(2) Effective July 1, 1992, no person may sell or distribute absorbent-based kits, intended for home use, as a means for collecting, recycling, or disposing of used oil.

(3) Effective January 1, 1994, no person may knowingly dispose of used oil except by delivery to a person collecting used oil for recycling, treatment, or disposal, subject to the provisions of this chapter and chapter 70.105 RCW.

(4) Effective January 1, 1994, no owner or operator of a solid waste landfill may knowingly accept used oil for disposal in the landfill.

(5) A person who violates this section is guilty of a misdemeanor. [1991 c 319 § 307.]

70.95I.070 Used oil transporter and processor requirements—Civil penalties. (1) By January 1, 1993, the department shall adopt rules requiring any transporter of used oil to comply with minimum notification, invoicing, recordkeeping, and reporting requirements. For the purpose of this section, a transporter means a person engaged in the off-site transportation of used oil in quantities greater than twenty-five gallons per day.

(2) By January 1, 1993, the department shall adopt minimum standards for used oil that is blended into fuels. Standards shall, at a minimum, establish testing and recordkeeping requirements. Unless otherwise exempted, a processor is any person involved in the marketing, blending, mixing, or processing of used oil to produce fuel to be burned for energy recovery.

(3) Any person who knowingly transports used oil without meeting the requirements of this section shall be subject to civil penalties under chapter 70.105 RCW.

(4) Rules developed under this section shall not require a manifest from individual residences served by a waste oil curbside collection program. [1991 c 319 § 308.]

70.95I.080 Above-ground used oil collection tanks. By January 1, 1987, the state fire protection board, in cooperation with the department of ecology, shall develop a state-wide standard for the placement of above-ground tanks to collect used oil from private individuals for recycling purposes. [1986 c 37 § 1. Formerly RCW 19.114.040.]

70.95I.900 Captions not law. Section headings as used in this chapter do not constitute any part of the law. [1991 c 319 § 309.]

70.95I.901 Short title. This chapter shall be known and may be cited as the used oil recycling act. [1991 c 319 § 310.]

70.95I.902 Severability—Part headings not law—1991 c 319. See RCW 70.95F.900 and 70.95F.901.

Chapter 70.96A

TREATMENT FOR ALCOHOLISM, INTOXICATION, AND DRUG ADDICTION (Formerly: Uniform alcoholism and intoxication treatment)

Sections	
70.96A.020	Definitions.
70.96A.090	Standards for treatment programs—Enforcement procedures—Penalties.
70.96A.095	Age of consent for treatment program.
70.96A.110	Voluntary treatment of alcoholics or other drug addicts.
70.96A.120	Treatment programs and facilities—Admissions—Peace officer duties—Protective custody.
70.96A.140	Involuntary commitment of alcoholics and minors incapacitated by alcoholism or drug addiction.
70.96A.150	Records of alcoholics and intoxicated persons.
70.96A.180	Payment for treatment—Financial ability of patients.
70.96A.320	Alcoholism and other drug addiction program—Generally.

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 suffers from the disease of alcoholism.

(2) "Alcoholism" means a disease, characterized by a dependency on alcoholic beverages, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(3) "Approved treatment program" means a discrete program of chemical dependency treatment provided by a treatment program certified by the department of social and health services as meeting standards adopted under this chapter.

(4) "Chemical dependency" means alcoholism or drug addiction, or dependence on alcohol and one or more other psychoactive chemicals, as the context requires.

(5) "Chemical dependency program" means expenditures and activities of the department designed and conducted to prevent or treat alcoholism and other drug addiction, including reasonable administration and overhead.

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

(7) "Designated chemical dependency specialist" means a person designated by the county alcoholism and other drug addiction program coordinator designated under RCW 70.96A.310 to perform the commitment duties described in RCW 70.96A.140 and qualified to do so by meeting standards adopted by the department.

(8) "Director" means the person administering the chemical dependency program within the department.

(9) "Drug addict" means a person who suffers from the disease of drug addiction.

(10) "Drug addiction" means a disease characterized by a dependency on psychoactive chemicals, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(11) "Emergency service patrol" means a patrol established under RCW 70.96A.170.

(12) "Gravely disabled by alcohol or other drugs" means that a person, as a result of the use of alcohol or other drugs: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by a repeated and escalating loss of cognition or volitional control over his or her actions and is not receiving care as essential for his or her health or safety.

(13) "Incapacitated by alcohol or other psychoactive chemicals" means that a person, as a result of the use of alcohol or other psychoactive chemicals, has his or her judgment so impaired that he or she is incapable of realizing and making a rational decision with respect to his or her need for treatment and constitutes a danger to himself or herself, to any other person, or to property.

(14) "Incompetent person" means a person who has been adjudged incompetent by the superior court.

(15) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or other psychoactive chemicals.

(16) "Licensed physician" means a person licensed to practice medicine or osteopathy in the state of Washington.

(17) "Minor" means a person less than eighteen years of age.

(18) "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.

(19) "Person" means an individual, including a minor.

(20) "Secretary" means the secretary of the department of social and health services.

(21) "Treatment" means the broad range of emergency, detoxification, residential, and outpatient services and care, including diagnostic evaluation, chemical dependency education and counseling, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons.

(22) "Treatment program" means an organization, institution, or corporation, public or private, engaged in the care, treatment, or rehabilitation of alcoholics or other drug addicts. [1991 c 364 § 8; 1990 c 151 § 2. Prior: 1989 c 271 § 305; 1989 c 270 § 3; 1972 ex.s. c 122 § 2.]

Findings—1991 c 364: "The legislature finds that the use of alcohol and illicit drugs continues to be a primary crippler of our youth. This translates into incredible costs to individuals, families, and society in terms of traffic fatalities, suicides, criminal activity including homicides, sexual promiscuity, familial incorrigibility, and conduct disorders, and educational fallout. Among children of all socioeconomic groups lower expectations for the future, low motivation and self-esteem, alienation, and depression are associated with alcohol and drug abuse.

Studies reveal that deaths from alcohol and other drug-related injuries rise sharply through adolescence, peaking in the early twenties.

But second peak occurs in later life, where it accounts for three times as many deaths from chronic diseases. A young victim's life expectancy is likely to be reduced by an average of twenty-six years.

Yet the cost of treating alcohol and drug addicts can be recouped in the first three years of abstinence in health care savings alone. Public money spent on treatment saves not only the life of the chemical abuser, it makes us safer as individuals, and in the long-run costs less.

The legislature further finds that many children who abuse alcohol and other drugs may not require involuntary treatment, but still are not adequately served. These children remain at risk for future chemical dependency, and may become mentally ill or a juvenile offender or need out-of-home placement. Children placed at risk because of chemical abuse may be better served by the creation of a comprehensive integrated system for children in crisis.

The legislature declares that an emphasis on the treatment of youth will pay the largest dividend in terms of preventable costs to individuals themselves, their families, and to society. The provision of augmented involuntary alcohol treatment services to youths, as well as involuntary treatment for youths addicted by other drugs, is in the interest of the public health and safety." [1991 c 364 § 7.]

Construction—1991 c 364 §§ 7-12: "The purpose of sections 7 through 12 of this act is solely to provide authority for the involuntary commitment of minors addicted by drugs within available funds and current programs and facilities. Nothing in sections 7 through 12 of this act shall be construed to require the addition of new facilities nor affect the department's authority for the uses of existing programs and facilities authorized by law. Nothing in sections 7 through 12 of this act shall prevent a parent or guardian from requesting the involuntary commitment of a minor through a county designated chemical dependency specialist on an ability to pay basis." [1991 c 364 § 13.]

Conflict with federal requirements—1991 c 364: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1991 c 364 § 15.]

Severability—1989 c 271: See note following RCW 9.94A.310.

70.96A.090 Standards for treatment programs—Enforcement procedures—Penalties. (1) The department shall adopt rules establishing standards for approved treatment programs, the process for the review and inspection program applying to the department for certification as an approved treatment program, and fixing 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 may suspend, revoke, limit, restrict, or modify an approval, or refuse to grant approval, for failure to meet the provisions of this chapter, or the standards adopted under this chapter. RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(3) No treatment program may advertise or represent itself as an approved treatment program if approval has not been granted, has been denied, suspended, revoked, or canceled.

(4) Certification as an approved treatment program is effective for one calendar year from the date of issuance of the certificate. The certification shall specify the types of services provided by the approved treatment program that meet the standards adopted under this chapter. Renewal of certification shall be made in accordance with

this section for initial approval and in accordance with the standards set forth in rules adopted by the secretary.

(5) Approved treatment programs shall not provide alcoholism or other drug addiction treatment services for which the approved treatment program has not been certified. Approved treatment programs may provide services for which approval has been sought and is pending, if approval for the services has not been previously revoked or denied.

(6) The department periodically shall inspect approved public and private treatment programs at reasonable times and in a reasonable manner.

(7) The department shall maintain and periodically publish a current list of approved treatment programs.

(8) Each approved treatment program shall file with the department on request, data, statistics, schedules, and information the department reasonably requires. An approved treatment program 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 programs, and its certification revoked or suspended.

(9) 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 or her to enter and inspect at reasonable times, and examine the books and accounts of, any approved public or private treatment program 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. [1990 c 151 § 5. Prior: 1989 c 270 § 19; 1989 c 175 § 131; 1972 ex.s. c 122 § 9.]

Effective date—1989 c 175: See note following RCW 34.05.010.

70.96A.095 Age of consent for treatment program.

Any person fourteen years of age or older may give consent for himself or herself to the furnishing of counseling, care, treatment, or rehabilitation by a treatment program or by any person. Consent of the parent, parents, or legal guardian of a person less than eighteen years of age is not necessary to authorize the care, except that the person shall not become a resident of the treatment program without such permission except as provided in RCW 70.96A.120 or 70.96A.140. The parent, parents, or legal guardian of a person less than eighteen years of age are not liable for payment of care for such persons pursuant to this chapter, unless they have joined in the consent to the counseling, care, treatment, or rehabilitation. [1991 c 364 § 9; 1989 c 270 § 24.]

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

70.96A.110 Voluntary treatment of alcoholics or other drug addicts. (1) An alcoholic or other drug addict may apply for voluntary treatment directly to an approved treatment program. If the proposed patient is a minor or an incompetent person, he or she, 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 program may determine who shall be admitted for treatment. If a person is refused admission to an approved treatment program, the administrator, subject to rules adopted by the secretary, shall refer the person to another approved treatment program for treatment if possible and appropriate.

(3) If a patient receiving inpatient care leaves an approved treatment program, he or she shall be encouraged to consent to appropriate outpatient treatment. If it appears to the administrator in charge of the treatment program that the patient is an alcoholic or other drug addict who requires help, the department may arrange for assistance in obtaining supportive services and residential programs.

(4) If a patient leaves an approved public treatment program, with or against the advice of the administrator in charge of the program, the department may make reasonable provisions for his or her transportation to another program or to his or her home. If the patient has no home he or she should be assisted in obtaining shelter. If the patient is less than fourteen years of age or an incompetent person the request for discharge from an inpatient program shall be made by a parent, legal guardian, or other legal representative or by the minor or incompetent if he or she was the original applicant. [1990 c 151 § 7; 1989 c 270 § 25; 1972 ex.s. c 122 § 11.]

70.96A.120 Treatment programs and facilities—Admissions—Peace officer duties—Protective custody. (1) An intoxicated person may come voluntarily to an approved treatment program for treatment. A person who appears to be intoxicated in a public place and to be in need of help, if he or she consents to the proffered help, may be assisted to his or her home, an approved treatment program or other health facility.

(2) Except for a person who may be apprehended for possible violation of laws not relating to alcoholism, drug addiction, 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 under the influence of intoxicating liquor or any drug and except for a person who may wish to avail himself or herself of the provisions of RCW 46.20.308, a person who appears to be incapacitated or gravely disabled by alcohol or other drugs and who is in a public place or who has threatened, attempted, or inflicted physical harm on himself, herself, or another, shall be taken into protective custody by a peace officer or staff designated by the county and as soon as practicable, but in no event beyond eight hours brought to an approved treatment program for treatment. If no approved treatment program is readily available he or she shall be taken to an emergency medical service customarily used for incapacitated persons. The peace officer or staff designated by the county, in detaining the person and in taking him or her to an approved treatment program, is taking him or her into protective custody and shall make every reasonable effort to protect his or her health and

safety. In taking the person into protective custody, the detaining peace officer or staff designated by the county may take reasonable steps including reasonable force if necessary to protect himself or herself or effect the custody. 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 program shall be examined by a qualified person. He or she 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 program shall arrange for his or her transportation.

(4) A person who is found to be incapacitated or gravely disabled by alcohol or other drugs at the time of his or her admission or to have become incapacitated or gravely disabled at any time after his or her admission, may not be detained at the program for more than seventy-two hours after admission as a patient, unless a petition is filed under RCW 70.96A.140, as now or hereafter amended: **PROVIDED**, That the treatment personnel at an approved treatment program are authorized to use such reasonable physical restraint as may be necessary to retain an incapacitated or gravely disabled person for up to seventy-two hours from the time of admission. The seventy-two hour periods specified in this section shall be computed by excluding Saturdays, Sundays, and holidays. A person may consent to remain in the program as long as the physician in charge believes appropriate.

(5) A person who is not admitted to an approved treatment program, is not referred to another health facility, and has no funds, may be taken to his or her home, if any. If he or she has no home, the approved treatment program shall provide him or her with information and assistance to access available community shelter resources.

(6) If a patient is admitted to an approved treatment program, his or her family or next of kin shall be notified as promptly as possible by the treatment program. If an adult patient who is not incapacitated requests that there be no notification, his or her request shall be respected.

(7) The peace officer, staff designated by the county, or treatment facility personnel, who act in compliance with this chapter and are performing in the course of their official duty are not criminally or civilly liable therefor.

(8) If the person in charge of the approved treatment program determines that appropriate treatment is available, the patient shall be encouraged to agree to further diagnosis and appropriate voluntary treatment. [1991 c 290 § 6; 1990 c 151 § 8; 1989 c 271 § 306; 1987 c 439 § 13; 1977 ex.s. c 62 § 1; 1974 ex.s. c 175 § 1; 1972 ex.s. c 122 § 12.]

Severability—1989 c 271: See note following RCW 9.94A.310.

70.96A.140 Involuntary commitment of alcoholics and minors incapacitated by alcoholism or drug addiction. (1) When a designated chemical dependency specialist receives information alleging that a person is incapacitated as a result of alcoholism, or in the case of a minor incapacitated by alcoholism and/or other drug addiction, the designated chemical dependency specialist, 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. If the designated chemical dependency specialist finds that the initial needs of such person would be better served by placement within the mental health system, the person shall be referred to an evaluation and treatment facility as defined in RCW 71.05.020 or 71.34.020. If placement in an alcohol treatment program is available and deemed appropriate, the petition shall allege that: The person is an alcoholic who is incapacitated by alcohol, or in the case of a minor incapacitated by alcoholism and/or other drug addiction, or that the person has twice before in the preceding twelve months been admitted for detoxification or treatment for alcoholism pursuant to RCW 70.96A.110, or in the case of a minor, detoxification or treatment for alcohol or drug addiction, and is in need of a more sustained treatment program, or that the person is an alcoholic, or in the case of a minor, an alcoholic or other drug addict, 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, by itself, 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 five 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 licensed physician's findings in support of the allegations of the petition. A physician employed by the petitioning program or the department is eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no less than two and no more than seven days after the date the petition was filed unless the person petitioned against is presently being detained in a program, pursuant to RCW 70.96A.120, 71.05.210, or 71.34.050, as now or hereafter amended, in which case the hearing shall be held within seventy-two hours of the filing of the petition: **PROVIDED, HOWEVER**, That the above specified seventy-two hours shall be computed by excluding Saturdays, 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 or her 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 designated chemical dependency specialist on the person whose commitment is sought, his or her next of

kin, a parent or his or her legal guardian if he or she 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, which may be telephonic, of at least one licensed physician who has examined the person whose commitment is sought. Communications otherwise deemed privileged under the laws of this state are deemed to be waived in proceedings under this chapter when a court of competent jurisdiction in its discretion determines that the waiver is necessary to protect either the detained person or the public. The waiver of a privilege under this section is limited to records or testimony relevant to evaluation of the detained person for purposes of a proceeding under this chapter. Upon motion by the detained person, or on its own motion, the court shall examine a record or testimony sought by a petitioner to determine whether it is within the scope of the waiver.

The record maker shall not be required to testify in order to introduce medical, nursing, or psychological records of detained persons so long as the requirements of RCW 5.45.020 are met, except that portions of the record that contain opinions as to whether the detained person is an alcoholic, or in the case of a minor incapacitated by alcoholism and/or other drug addiction, must be deleted from the records unless the person offering the opinions is available for cross-examination. The person shall be present unless the court believes that his or her presence is likely to be injurious to him or her; in this event the court may deem it appropriate to appoint a guardian ad litem to represent him or her 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 or she shall be given an opportunity to be examined by a court appointed licensed physician. If he or she 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 or her 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 program. It shall not order commitment of a person unless it determines that an approved treatment program is available and able to provide adequate and appropriate treatment for him or her.

(5) A person committed under this section shall remain in the program for treatment for a period of sixty days unless sooner discharged. At the end of the sixty-day period, he or she shall be discharged automatically unless the program, before expiration of the period, files a petition for his or her 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 or she is an alcoholic, or, in the case of a minor, an alcoholic or other drug addict, likely to inflict physical harm on another, the program shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) Upon the filing of a petition for recommitment under subsection (5) of this section, the court shall fix a date for hearing no less than two and no more than seven 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 program on the person whose commitment is sought, his or her next of kin, the original petitioner under subsection (1) of this section if different from the petitioner for recommitment, one of his or her parents or his or her legal guardian if he or she is a minor, and his or her attorney and any other person the court believes advisable. At the hearing the court shall proceed as provided in subsection (3) of this section.

(7) The approved treatment program 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 program to another if transfer is medically advisable.

(8) A person committed to the custody of a program for treatment shall be discharged at any time before the end of the period for which he or she has been committed and he or she 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 himself, herself, or another, or, in the case of a minor, an alcoholic or other drug addict, 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 or, in the case of a minor, incapacitated by alcoholism and/or other drug addiction, that the incapacity no longer exists.

(9) The court shall inform the person whose commitment or recommitment is sought of his or her right to contest the application, be represented by counsel at every stage of any proceedings relating to his or her commitment and recommitment, and have counsel appointed by the court or provided by the court, if he or she 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 or her regardless of his or her wishes. The person shall, if he or she 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 or her right to be examined by a licensed physician of his or her choice. If the person is unable to

obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) 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.

(11) The venue for proceedings under this section is the county in which person to be committed resides or is present.

(12) When in the opinion of the professional person in charge of the program providing involuntary treatment under this chapter, the committed patient can be appropriately served by less restrictive treatment before expiration of the period of commitment, then the less restrictive care may be required as a condition for early release for a period which, when added to the initial treatment period, does not exceed the period of commitment. If the program designated to provide the less restrictive treatment is other than the program providing the initial involuntary treatment, the program 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 chemical dependency specialist of original commitment, and the court of original commitment. The program designated to provide less restrictive care may modify the conditions for continued release when the modifications are in the best interests of the patient. If the program providing less restrictive care and the designated chemical dependency specialist determine that a conditionally released patient is failing to adhere to the terms and conditions of his or her release, or that substantial deterioration in the patient's functioning has occurred, then the designated chemical dependency specialist shall notify the court of original commitment and request a hearing to be held no less than two and no more than seven days after the date of the request to determine whether or not the person should be returned to more restrictive care. The designated chemical dependency specialist shall file a petition with the court stating the facts substantiating the need for the hearing along with the treatment recommendations. The patient shall have the same rights with respect to notice, hearing, and counsel as for the original involuntary treatment proceedings. The issues to be determined at the hearing are whether the conditionally released patient did or did not adhere to the terms and conditions of his or her release to less restrictive care or that substantial deterioration of the patient's functioning has occurred and whether the conditions of release should be modified or the person should be returned to a more restrictive program. The hearing may be waived by the patient and his or her counsel and his or her guardian or conservator, if any, but may not be waived unless all such persons agree to the waiver. Upon waiver, the person may be returned for involuntary treatment or continued on conditional release on the same or modified conditions. [1991 c 364 § 10; 1990 c 151 § 3; 1989 c 271 § 307; 1987 c 439 § 14; 1977 ex.s. c 129 § 1; 1974 ex.s. c 175 § 2; 1972 ex.s. c 122 § 14.]

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

Severability—1989 c 271: See note following RCW 9.94A.310.

70.96A.150 Records of alcoholics and intoxicated persons. (1) The registration and other records of treatment programs shall remain confidential. Records may be disclosed (a) in accordance with the prior written consent of the patient with respect to whom such record is maintained, (b) if authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause, (c) to comply with state laws mandating the reporting of suspected child abuse or neglect, or (d) when a patient commits a crime on program premises or against program personnel, or threatens to do so.

(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 other drug addiction, verification of eligibility and appropriateness of reimbursement, and the evaluation of alcoholism and other drug treatment programs. Information under this subsection shall not be published in a way that discloses patients' names or otherwise discloses their identities.

(3) Nothing contained in this chapter relieves a person or firm from the requirements under federal regulations for the confidentiality of alcohol and drug abuse patient records. Obligations imposed on drug and alcohol treatment programs and protections afforded alcohol and drug abuse patients under federal regulations apply to all programs approved by the department under RCW 70.96A.090. [1990 c 151 § 1; 1989 c 162 § 1; 1972 ex.s. c 122 § 15.]

70.96A.180 Payment for treatment—Financial ability of patients. (1) If treatment is provided by an approved treatment program and the patient has not paid or is unable to pay the charge therefor, the program 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 program because of the treatment provided to the patient.

(2) A patient in a program, 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 program 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. [1990 c 151 § 6; 1989 c 270 § 31; 1972 ex.s. c 122 § 18.]

70.96A.320 Alcoholism and other drug addiction program—Generally. (1) A county legislative authority, or two or more counties acting jointly, may establish an alcoholism and other drug addiction program. If two or more counties jointly establish the program, they shall designate one county to provide administrative and financial services.

(2) To be eligible for funds from the department for the support of the county alcoholism and other drug addiction program, the county legislative authority shall establish a county alcoholism and other drug addiction board under RCW 70.96A.300 and appoint a county alcoholism and other drug addiction program coordinator under RCW 70.96A.310.

(3) The county legislative authority may apply to the department for financial support for the county program of alcoholism and other drug addiction. To receive financial support, the county legislative authority shall submit a plan that meets the following conditions:

(a) It shall describe the services and activities to be provided;

(b) It shall include anticipated expenditures and revenues;

(c) It shall be prepared by the county alcoholism and other drug addiction program board and be adopted by the county legislative authority;

(d) It shall reflect maximum effective use of existing services and programs; and

(e) It shall meet other conditions that the secretary may require.

(4) The county may accept and spend gifts, grants, and fees, from public and private sources, to implement its program of alcoholism and other drug addiction.

(5) The county may subcontract for detoxification, residential treatment, or outpatient treatment with treatment programs that are approved treatment programs. The county may subcontract for other services with individuals or organizations approved by the department.

(6) To continue to be eligible for financial support from the department for the county alcoholism and other drug addiction program, an increase in state financial support shall not be used to supplant local funds from a source that was used to support the county alcoholism and other drug addiction program before the effective date of the increase. [1990 c 151 § 9; 1989 c 270 § 17.]

Chapter 70.98

NUCLEAR ENERGY AND RADIATION

Sections

70.98.030	Definitions.
70.98.050	State radiation control agency.
70.98.085	Suspension and reinstatement of site use permits— Surveillance fee.
70.98.095	Immunity of state—Demonstration of liability coverage—Suspension of license or permit.
70.98.098	Liability coverage—Generally.

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 atomic or subatomic particles; but not sound or radio waves, or visible, infrared, or ultraviolet light.

(3)(a) "General license" means a license effective pursuant to rules 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 is determined by the United States Nuclear Regulatory Commission or its successor pursuant to the provisions of section 61 of the United States Atomic Energy Act of 1954, as amended (42 U.S.C. Sec. 209) to be source material; or (b) ores containing one or more of the foregoing materials, in such concentration as the commission may by regulation determine from time to time.

(6) "Special nuclear material" means (a) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the United States Nuclear Regulatory Commission or its successor, pursuant to the provisions of section 51 of the United States Atomic Energy Act of 1954, as amended (42 U.S.C. Sec. 2071), determines to be special nuclear material, 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 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. [1991 c 3 § 355; 1983 1st ex.s. c 19 § 9; 1979 c 141 § 125; 1965 c 88 § 2; 1961 c 207 § 3.]

Construction—Conflict with federal requirements—Severability—1983 1st ex.s. c 19: See RCW 43.200.900 through 43.200.902.

70.98.050 State radiation control agency. (1) The department of health 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 health 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 a state-wide radiological baseline beginning with the establishment of a baseline for the Hanford reservation;

(c) Implement an independent state-wide program to monitor ionizing radiation emissions from radiation sources within the state;

(d) Develop programs with due regard for compatibility with federal programs for regulation of byproduct, source, and special nuclear materials;

(e) Conduct environmental radiation monitoring programs which will determine the presence and significance of radiation in the environment and which will verify the adequacy and accuracy of environmental radiation monitoring programs conducted by the federal government at its installations in Washington and by radioactive materials licensees at their installations;

(f) Formulate, adopt, promulgate, and repeal codes, rules and regulations relating to control of sources of ionizing radiation;

(g) 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;

(h) 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;

(i) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of ionizing radiation, including the collection of statistical data and epidemiological research, where available, on diseases that result from exposure to sources of ionizing radiation;

(j) 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;

(k) Collect and disseminate information relating to nonionizing radiation, including:

(i) Maintaining a state clearinghouse of information pertaining to sources and effects of nonionizing radiation with an emphasis on electric and magnetic fields;

(ii) Maintaining current information on the status and results of studies pertaining to health effects resulting from exposure to nonionizing radiation with an emphasis on studies pertaining to electric and magnetic fields;

(iii) Serving as the lead state agency on matters pertaining to electric and magnetic fields and periodically informing state agencies of relevant information pertaining to nonionizing radiation;

(1) In connection with any adjudicative proceeding as defined by RCW 34.05.010 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.

(5) In order to avoid duplication of efforts, the agency may acquire the data requested under this section from public and private entities that possess this information. [1990 c 173 § 2; 1989 c 175 § 132; 1985 c 383 § 1; 1985 c 372 § 1; 1971 ex.s. c 189 § 10; 1970 ex.s. c 18 § 16; 1965 c 88 § 3; 1961 c 207 § 5.]

Finding—1990 c 173: "The legislature finds that concern has been raised over possible health effects resulting from exposure to nonionizing radiation, and specifically exposure to electric and magnetic fields. The legislature further finds that there is no clear responsibility in state government for following this issue and that this responsibility is best suited for the department of health." [1990 c 173 § 1.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1985 c 372: "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." [1985 c 372 § 5.]

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

70.98.085 Suspension and reinstatement of site use permits—Surveillance fee. (1) The agency is empowered to suspend and reinstate site use permits consistent with current regulatory practices and in coordination with the department of ecology, for generators, packagers, or brokers using the Hanford low-level radioactive waste disposal facility.

(2) The agency shall collect a surveillance fee as an added charge on each cubic foot of low level radioactive waste disposed of at the disposal site in this state which shall be set at a level that is sufficient to fund completely the radiation control activities of the agency directly related to the disposal site, including but not limited to the management, licensing, monitoring, and regulation of the site. The surveillance fee shall not exceed five percent in 1990, six percent in 1991, and seven percent in 1992 of the basic minimum fee charged by an operator of a low-level radioactive waste disposal site in this state. The basic minimum fee consists of the disposal fee for the site operator, the fee for the perpetual care and maintenance fund administered by the state, the fee for the state closure fund, and the tax collected pursuant to chapter 82.04 RCW. Site use permit fees and surcharges collected under chapter 43.200 RCW are not part of the basic minimum fee. The fee shall also provide funds to the Washington state patrol for costs

incurred from inspection of low-level radioactive waste shipments entering this state. Disbursements for this purpose shall be by authorization of the secretary of the department of health or the secretary's designee.

The agency may adopt such rules as are necessary to carry out its responsibilities under this section. [1990 c 21 § 7; 1989 c 106 § 1; 1986 c 2 § 2; 1985 c 383 § 3.]

Issuance of site use permits: RCW 43.200.080.

70.98.095 Immunity of state—Demonstration of liability coverage—Suspension of license or permit.

(1)(a) The radiation control agency shall require that any person who holds or applies for a license or permit under this chapter indemnify and hold harmless the state from claims, suits, damages, or expenses on account of injuries to or death of persons and property, arising or growing out of any operations or activities for which the person holds the license or permit, and any necessary or incidental operations.

(b) Except for a license or permit holder who the secretary has exempted from maintaining liability coverage pursuant to RCW 70.98.098(5), the radiation control agency shall require any person who holds or applies for a license or permit under this chapter to demonstrate that the person has and maintains liability coverage for the operations for which the state has been indemnified and held harmless pursuant to this section. The agency shall require coverage in an amount determined by the secretary pursuant to RCW 70.98.098.

(2) The radiation control agency shall suspend the license or permit of any person required by this section to hold and maintain liability coverage who fails to demonstrate compliance with this section. The license or permit shall not be reinstated until the person demonstrates compliance with this section.

(3) The radiation control agency shall require (a) that any person required to maintain liability coverage maintain with the agency current copies of any insurance policies, certificates of insurance, or any other documents used to comply with this section, (b) that the agency be notified of any changes in the insurance coverage or financial condition of the person, and (c) that the state be named as an insured party on any insurance policy used to comply with this section. [1990 c 82 § 4; 1986 c 191 § 3.]

Construction—Severability—1986 c 191: See RCW 43.200.905 and 43.200.906.

70.98.098 Liability coverage—Generally. (1) Except as otherwise provided in subsection (5) of this section, the secretary shall require each permit or license holder to maintain liability coverage in an amount that is adequate to protect the state and its citizens from all claims, suits, losses, damages, or expenses on account of injuries to persons and property damage arising or growing out of the packaging, shipping, transporting, treatment, storage, and disposal of commercial low-level radioactive materials. The liability coverage may be in the form of insurance, cash, surety bonds, corporate guarantees, and other acceptable instruments.

(2) In making the determination of the appropriate level of liability coverage, the secretary shall consider:

(a) The nature and purpose of the activity and its potential for injury and damages to or claims against the state and its citizens;

(b) The current and cumulative manifested volume and radioactivity of material being packaged, transported, buried, or otherwise handled;

(c) The location where the material is being packaged, transported, buried, or otherwise handled, including the proximity to the general public and geographic features such as geology and hydrology, if relevant;

(d) The report prepared by the department of ecology pursuant to RCW 43.200.200; and

(e) The legal defense cost, if any, that will be paid from the required liability coverage amount.

(3) The secretary may establish different levels of required liability coverage for various classes of permit or license holders.

(4) The secretary shall establish by rule the instruments or mechanisms by which a person may demonstrate liability coverage as required by RCW 70.98.095. Any instrument or mechanism approved as an alternative to liability insurance shall provide the state and its citizens with a level of financial protection at least as great as would be provided by liability insurance.

(5)(a) The secretary by rule may exempt from the requirement to provide liability coverage a class of permit or license holders if the secretary determines that the exemption of that class will not pose a significant risk to persons or property and will not pose substantial financial risk to the state.

(b) The secretary may exempt from the requirement to provide liability coverage an individual permit or license holder if the secretary determines that the cost of obtaining that coverage for that license or permit or license holder would impose a substantial financial hardship on the person and that failure to maintain the coverage will not pose a significant risk to persons or property and will not pose a substantial financial risk to the state. [1990 c 82 § 3.]

Chapter 70.104

PESTICIDES—HEALTH HAZARDS

Sections

70.104.010	Declaration.
70.104.030	Powers and duties of department of health.
70.104.040	Pesticide emergencies—Authority of department of agriculture not infringed upon.
70.104.050	Investigation of human exposure to pesticides.
70.104.055	Pesticide poisonings—Reports.
70.104.057	Pesticide poisonings—Medical education program.
70.104.060	Technical assistance, consultations and services to physicians and agencies authorized.
70.104.080	Pesticide panel—Generally.
70.104.090	Pesticide panel—Responsibilities.

70.104.010 Declaration. The department of health 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. [1991 c 3 § 356; 1971 ex.s. c 41 § 1.]

70.104.030 Powers and duties of department of health. (1) The department of health shall investigate all suspected human cases of pesticide poisoning and such cases of suspected pesticide poisoning of animals that may relate to human illness. The department shall establish time periods by rule to determine investigation response time. Time periods shall range from immediate to forty-eight hours to initiate an investigation, depending on the severity of the case or suspected case of pesticide poisoning.

In order to adequately investigate such cases, the department 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 department shall, by rule adopted pursuant to the Administrative Procedure Act, chapter 34.05 RCW, 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, the department of labor and industries, and other appropriate agencies of the results of its investigation for such action as the other departments or agencies deem appropriate. The notification of such investigations and their results may include recommendations for further action by the appropriate department or agency. [1991 c 3 § 357; 1989 c 380 § 71; 1971 ex.s. c 41 § 3.]

Effective date—1989 c 380 §§ 69, 71-73: See note following RCW 70.104.090.

Severability—1989 c 380: See RCW 15.58.942.

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 health by telephone or the fastest available method.

(2) Upon notification or discovery of any pesticide emergency the department of health 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 shall have all power and authority to accomplish those things necessary to carry out such order. Any expenses incurred by the department 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 health 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 or his or her 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 or her crops and/or animals provided that the processing 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 Control Act, chapter 15.58 RCW and the Washington Pesticide Application Act, chapter 17.21 RCW. The department of health shall work closely with the department of agriculture in the enforcement of this chapter and shall keep it appropriately advised. [1991 c 3 § 358; 1983 c 3 § 178; 1971 ex.s. c 41 § 4.]

70.104.050 Investigation of human exposure to pesticides. The department of health 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. [1991 c 3 § 359; 1971 ex.s. c 41 § 5.]

70.104.055 Pesticide poisonings—Reports. (1) Any attending physician or other health care provider recognized as primarily responsible for the diagnosis and treatment of a patient or, in the absence of a primary health care provider, the health care provider initiating diagnostic testing or therapy for a patient shall report a case or suspected case of pesticide poisoning to the department of health in the manner prescribed by, and within the reasonable time periods established by, rules of the state board of health. Time periods established by the board shall range from immediate reporting to reporting within seven days depending on the severity of the case or suspected case of pesticide poisoning. The reporting requirements shall be patterned after other board rules establishing requirements for reporting of diseases or conditions. Confidentiality requirements shall be the same as the confidentiality requirements established for other reportable diseases or conditions. The board rules shall determine what information shall be

reported. Reports shall be made on forms provided to health care providers by the department of health. For purposes of any oral reporting, the department of health shall make available a toll-free telephone number.

(2) Within a reasonable time period as established by board rules, the department of health shall investigate the report of a case or suspected case of pesticide poisoning to document the incident. The department shall report the results of the investigation to the health care provider submitting the original report.

(3) Cases or suspected cases of pesticide poisoning shall be reported by the department of health to the pesticide reporting and tracking review panel within the time periods established by state board of health rules.

(4) Upon request of the primary health care provider, pesticide applicators or employers shall make available to that provider any available information on pesticide applications which may have affected the health of the provider's patient. This information is to be used only for the purposes of providing health care services to the patient.

(5) Any failure of the primary health care provider to make the reports required under this section may be cause for the department of health to submit information about such nonreporting to the applicable disciplining authority for the provider under RCW 18.130.040.

(6) No cause of action shall arise as the result of: (a) The failure to report under this section; or (b) any report submitted to the department of health under this section.

(7) For the purposes of this section, a suspected case of pesticide poisoning is a case in which the diagnosis is thought more likely than not to be pesticide poisoning. [1991 c 3 § 360; 1989 c 380 § 72.]

Effective date—1989 c 380 §§ 69, 71-73: See note following RCW 70.104.090.

Severability—1989 c 380: See RCW 15.58.942.

70.104.057 Pesticide poisonings—Medical education program. The department of health, after seeking advice from the state board of health, local health officers, and state and local medical associations, shall develop a program of medical education to alert physicians and other health care providers to the symptoms, diagnosis, treatment, and reporting of pesticide poisonings. [1991 c 3 § 361; 1989 c 380 § 73.]

Effective date—1989 c 380 §§ 69, 71-73: See note following RCW 70.104.090.

Severability—1989 c 380: See RCW 15.58.942.

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 health 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. [1991 c 3 § 362; 1971 ex.s. c 41 § 6.]

70.104.080 Pesticide panel—Generally. (1) There is hereby created a pesticide incident reporting and tracking review panel consisting of the following members:

(a) The directors, secretaries, or designees of the departments of labor and industries, agriculture, natural resources, wildlife, and ecology;

(b) The director [secretary] of the department of health or his or her designee, who shall serve as the coordinating agency for the review panel;

(c) The chair of the department of environmental health of the University of Washington, or his or her designee;

(d) The pesticide coordinator and specialist of the cooperative extension at Washington State University or his or her designee;

(e) A representative of the Washington poison control center network;

(f) A practicing toxicologist and a member of the general public, who shall each be appointed by the governor for terms of two years and may be appointed for a maximum of four terms at the discretion of the governor. The governor may remove either member prior to the expiration of his or her term of appointment for cause. Upon the death, resignation, or removal for cause of a member of the review panel, the governor shall fill such vacancy, within thirty days of its creation, for the remainder of the term in the manner herein prescribed for appointment to the review panel.

(2) The review panel shall be chaired by the secretary of the department of health, or designee. The members of the review panel shall meet at least monthly at a time and place specified by the chair, or at the call of a majority of the review panel. [1991 c 3 § 363; 1989 c 380 § 68.]

Severability—1989 c 380: See RCW 15.58.942.

70.104.090 Pesticide panel—Responsibilities. The responsibilities of the review panel shall include, but not be limited to:

(1) Establishing guidelines for centralizing the receipt of information relating to actual or alleged health and environmental incidents involving pesticides;

(2) Reviewing and making recommendations for procedures for investigation of pesticide incidents, which shall be implemented by the appropriate agency unless a written statement providing the reasons for not adopting the recommendations is provided to the review panel;

(3) Monitoring the time periods required for response to reports of pesticide incidents by the departments of agriculture, health, and labor and industries;

(4) At the request of the chair or any panel member, reviewing pesticide incidents of unusual complexity or those that cannot be resolved;

(5) Identifying inadequacies in state and/or federal law that result in insufficient protection of public health and safety, with specific attention to advising the appropriate agencies on the adequacy of pesticide reentry intervals established by the federal environmental protection agency and registered pesticide labels to protect the health and safety of farmworkers. The panel

shall establish a priority list for reviewing reentry intervals, which considers the following criteria:

(a) Whether the pesticide is being widely used in labor-intensive agriculture in Washington;

(b) Whether another state has established a reentry interval for the pesticide that is longer than the existing federal reentry interval;

(c) The toxicity category of the pesticide under federal law;

(d) Whether the pesticide has been identified by a federal or state agency or through a scientific review as presenting a risk of cancer, birth defects, genetic damage, neurological effects, blood disorders, sterility, menstrual dysfunction, organ damage, or other chronic or subchronic effects; and

(e) Whether reports or complaints of ill effects from the pesticide have been filed following worker entry into fields to which the pesticide has been applied; and

(6) Reviewing and approving an annual report prepared by the department of health to the governor, agency heads, and members of the legislature, with the same available to the public. The report shall include, at a minimum:

(a) A summary of the year's activities;

(b) A synopsis of the cases reviewed;

(c) A separate descriptive listing of each case in which adverse health or environmental effects due to pesticides were found to occur;

(d) A tabulation of the data from each case;

(e) An assessment of the effects of pesticide exposure in the workplace;

(f) The identification of trends, issues, and needs; and

(g) Any recommendations for improved pesticide use practices. [1991 c 3 § 364; 1989 c 380 § 69.]

Effective date—1989 c 380 §§ 69, 71–73: "Sections 69 and 71 through 73 of this act shall take effect on January 1, 1990." [1989 c 380 § 90.]

Severability—1989 c 380: See RCW 15.58.942.

Chapter 70.105

HAZARDOUS WASTE MANAGEMENT

Sections

70.105.221 Local governments to prepare local hazardous waste plans—Used oil recycling element.

70.105.221 Local governments to prepare local hazardous waste plans—Used oil recycling element. Local governments and combinations of local governments shall amend their local hazardous waste plans required under RCW 70.105.220 to comply with RCW 70.95I.020. [1991 c 319 § 312.]

Severability—Part beadings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

Chapter 70.105A

HAZARDOUS WASTE FEES—REPEALED

Sections

70.105A.010 through 70.105A.030 Repealed.

70.105A.040 through 70.105A.090 Repealed.

70.105A.900 Repealed.

70.105A.905 Repealed.

70.105A.010 through 70.105A.030 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

70.105A.040 through 70.105A.090 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

70.105A.900 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

70.105A.905 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 70.105D

HAZARDOUS WASTE CLEANUP—MODEL TOXICS CONTROL ACT

Sections

70.105D.070 Toxics control accounts.

70.105D.070 Toxics control accounts. (1) The state toxics control account and the local toxics control account are hereby created in the state treasury.

(2) The following moneys shall be deposited into the state toxics control account: (a) Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-three one-hundredths of one percent; (b) the costs of remedial actions recovered under this chapter or chapter 70.105A RCW; (c) penalties collected or recovered under this chapter; and (d) any other money appropriated or transferred to the account by the legislature. Moneys in the account may be used only to carry out the purposes of this chapter, including but not limited to the following activities:

(i) The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.105 RCW;

(ii) The state's responsibility for solid waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.95 RCW;

(iii) The hazardous waste cleanup program required under this chapter;

(iv) State matching funds required under the federal cleanup law;

(v) Financial assistance for local programs in accordance with RCW 70.95.130, 70.95.140, 70.95.220, 70.95-.230, 70.95.530, 70.105.220, 70.105.225, 70.105.235, and 70.105.260;

(vi) State government programs for the safe reduction, recycling, or disposal of hazardous wastes from households, small businesses, and agriculture;

(vii) Hazardous materials emergency response training;

(viii) Water and environmental health protection and monitoring programs;

(ix) Programs authorized under chapter 70.146 RCW;

(x) A public participation program, including regional citizen advisory committees;

(xi) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with cleanup standards under RCW 70.105D.030(2)(d) but only when the amount and terms of such funding are established under a settlement agreement under RCW 70.105D.040(4) and when the director has found that the funding will achieve both (A) a substantially more expeditious or enhanced cleanup than would otherwise occur, and (B) the prevention or mitigation of unfair economic hardship; and

(xii) Development and demonstration of alternative management technologies designed to carry out the top two hazardous waste management priorities of RCW 70.105.150.

(3) The following moneys shall be deposited into the local toxics control account: Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-seven one-hundredths of one percent. Moneys deposited in the local toxics control account shall be used by the department for grants to local governments for the following purposes in descending order of priority: (a) Remedial actions; (b) hazardous waste plans and programs under RCW 70.105.220, 70.105.225, 70.105.235, and 70.105.260; and (c) solid waste plans and programs under RCW 70.95.130, 70.95.140, 70.95.220, and 70.95.230. Funds for plans and programs shall be allocated consistent with the priorities and matching requirements established in chapters 70.105 and 70.95 RCW.

(4) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the state and local toxics control accounts may be spent only after appropriation by statute.

(5) One percent of the moneys deposited into the state and local toxics control accounts shall be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. No grant may exceed fifty thousand dollars though it may be renewed annually. Moneys appropriated for public participation from either account which are not expended at the close of any biennium shall revert to the state toxics control account.

(6) No moneys deposited into either the state or local toxics control account may be used for solid waste incinerator feasibility studies, construction, maintenance, or operation.

(7) The department shall adopt rules for grant issuance and performance. [1991 1st sp.s. c 13 § 69; 1989 c 2 § 7 (Initiative Measure No. 97, approved November 8, 1988).]

~~Effective dates~~—~~Severability~~—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Chapter 70.116

PUBLIC WATER SYSTEM COORDINATION ACT OF 1977

Sections

70.116.010 Legislative declaration.

70.116.030 Definitions.

70.116.134 Satellite system management agencies.

Drinking water quality consumer complaints: RCW 80.04.110.

70.116.010 Legislative declaration. The legislature hereby finds that an adequate supply of potable water for domestic, commercial, and industrial use is vital to the health and well-being of the people of the state. Readily available water for use in public water systems is limited and should be developed and used efficiently with a minimum of loss or waste.

In order to maximize efficient and effective development of the state's public water supply systems, the department of health shall assist water purveyors by providing a procedure to coordinate the planning of the public water supply systems. [1991 c 3 § 365; 1977 ex.s. c 142 § 1.]

70.116.030 Definitions. Unless the context clearly requires otherwise, the following terms when used in this chapter shall be defined as follows:

(1) "Coordinated water system plan" means a plan for public water systems within a critical water supply service area which identifies the present and future needs of the systems and sets forth means for meeting those needs in the most efficient manner possible. Such a plan shall include provisions for subsequently updating the plan. In areas where more than one water system exists, a coordinated plan may consist of either: (a) A new plan developed for the area following its designation as a critical water supply service area; or (b) a compilation of compatible water system plans existing at the time of such designation and containing such supplementary provisions as are necessary to satisfy the requirements of this chapter. Any such coordinated plan must include provisions regarding: Future service area designations; assessment of the feasibility of shared source, transmission, and storage facilities; emergency inter-ties; design standards; and other concerns related to the construction and operation of the water system facilities.

(2) "Critical water supply service area" means a geographical area which is characterized by a proliferation of small, inadequate water systems, or by water supply problems which threaten the present or future water quality or reliability of service in such a manner that efficient and orderly development may best be achieved

through coordinated planning by the water utilities in the area.

(3) "Public water system" means any system providing water intended for, or used for, human consumption or other domestic uses. It includes, but is not limited to, the source, treatment for purifying purposes only, storage, transmission, pumping, and distribution facilities where water is furnished to any community, or number of individuals, or is made available to the public for human consumption or domestic use, but excluding water systems serving one single family residence. However, systems existing on September 21, 1977 which are owner operated and serve less than ten single family residences or which serve only one industrial plant shall be excluded from this definition and the provisions of this chapter.

(4) "Purveyor" means any agency or subdivision of the state or any municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity, that owns or operates for wholesale or retail service a public water system. It also means the authorized agents of any such entities.

(5) "Secretary" means the secretary of the department of health or the secretary's authorized representative.

(6) "Service area" means a specific geographical area serviced or for which service is planned by a purveyor. [1991 c 3 § 366; 1977 ex.s. c 142 § 3.]

70.116.134 Satellite system management agencies.

(1) The secretary shall adopt rules pursuant to chapter 34.05 RCW establishing criteria for designating individuals or water purveyors as qualified satellite system management agencies. The criteria shall set forth minimum standards for designation as a satellite system management agency qualified to assume ownership, operation, or both, of an existing or proposed public water system. The criteria shall include demonstration of financial integrity and operational capability, and may require demonstration of previous experience in successful operation and management of a public water system.

(2) Each county shall identify potential satellite system management agencies to the secretary for areas where: (a) No purveyor has been designated a future service area pursuant to this chapter, or (b) an existing purveyor is unable or unwilling to provide service. Preference shall be given to public utilities or utility districts or to investor-owned utilities under the jurisdiction of the utilities and transportation commission.

(3) The secretary shall approve satellite system management agencies meeting the established criteria and shall maintain and make available to counties a list of approved agencies. Prior to the construction of a new public water system, the individual(s) proposing the new system or requesting service shall first be directed by the local agency responsible for issuing the construction or building permit to one or more qualified satellite system management agencies designated for the service area where the new system is proposed for the purpose of exploring the possibility of a satellite agency either owning or operating the proposed new water system.

(4) Approved satellite system management agencies shall be reviewed periodically by the secretary for continued compliance with established criteria. The secretary may require status reports and other information necessary for such review. Satellite system management agencies shall be subject to reapproval at the discretion of the secretary but not less than once every five years.

(5) The secretary may assess reasonable fees to process applications for initial approval and for periodic review of satellite system management agencies. A satellite system management account is hereby created in the custody of the state treasurer. All receipts from satellite system management agencies or applicants under subsection (4) of this section shall be deposited into the account. Funds in this account may be used only for administration of the satellite system management program. Expenditures from the account shall be authorized by the secretary or the secretary's designee. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(6) For purposes of this section, "satellite system management agency" and "satellite agency" shall mean a person or entity that is certified by the secretary to own or operate more than one public water system on a regional or county-wide basis, without the necessity for a physical connection between such systems. [1991 c 18 § 1.]

Chapter 70.117

SKIING AND COMMERCIAL SKI ACTIVITY

Sections

70.117.010 Ski area sign requirements.

70.117.010 Ski area sign requirements. (1) The operator of any ski area shall maintain a sign system based on international or national standards and as may be required by the state parks and recreation commission.

All signs for instruction of the public shall be bold in design with wording short, simple, and to the point. All such signs shall be prominently placed.

Entrances to all machinery, operators', and attendants' rooms shall be posted to the effect that unauthorized persons are not permitted therein.

The sign "Working on Lift" or a similar warning sign shall be hung on the main disconnect switch and at control points for starting the auxiliary or prime mover when a person is working on the passenger tramway.

(2) All signs required for normal daytime operation shall be in place, and those pertaining to the tramway, lift, or tow operations shall be adequately lighted for night skiing.

(3) If a particular trail or run has been closed to the public by an operator, the operator shall place a notice thereof at the top of the trail or run involved, and no person shall ski on a run or trail which has been designated "Closed".

(4) An operator shall place a notice at the embarking terminal or terminals of a lift or tow which has been closed that the lift or tow has been closed and that a

person embarking on such a lift or tow shall be considered to be a trespasser.

(5) Any snow making machines or equipment shall be clearly visible and clearly marked. Snow grooming equipment or any other vehicles shall be equipped with a yellow flashing light at any time the vehicle is moving on or in the vicinity of a ski run; however, low profile vehicles, such as snowmobiles, may be identified in the alternative with a flag on a mast of not less than six feet in height.

(6) The operator of any ski area shall maintain a readily visible sign on each rope tow, wire rope tow, j-bar, t-bar, ski lift, or other similar device, advising the users of the device that:

(a) Any person not familiar with the operation of the lift shall ask the operator thereof for assistance and/or instruction; and

(b) The skiing-ability level recommended for users of the lift and the runs served by the device shall be classified "easiest", "more difficult", and "most difficult". [1991 c 75 § 1; 1989 c 81 § 2; 1977 ex.s. c 139 § 1.]

Severability—1989 c 81: See note following RCW 70.117.015.

Chapter 70.118

ON-SITE SEWAGE DISPOSAL SYSTEMS

Sections

70.118.020	Definitions.
70.118.040	Local boards of health—Authority to waive sections of local plumbing and/or building codes.

70.118.020 Definitions. As used in this chapter, the terms defined in this section shall have the meanings indicated unless the context clearly indicates otherwise.

(1) "Nonwater-carried sewage disposal devices" means any device that stores and treats nonwater-carried human urine and feces.

(2) "Alternative methods of effluent disposal" means systems approved by the department of health, including at least, mound systems, alternating drain fields, anaerobic filters, evapotranspiration systems, and aerobic systems.

(3) "Failure" means: (a) Effluent has been discharged on the surface of the ground prior to approved treatment; or (b) effluent has percolated to the surface of the ground; or (c) effluent has contaminated or threatens to contaminate a ground water supply. [1991 c 3 § 367; 1977 ex.s. c 133 § 2.]

70.118.040 Local boards of health—Authority to waive sections of local plumbing and/or building codes. With the advice of the secretary of the department of health, local boards of health are hereby authorized to waive applicable sections of local plumbing and/or building codes that might prohibit the use of an alternative method for correcting a failure. [1991 c 3 § 368; 1977 ex.s. c 133 § 4.]

Chapter 70.119

PUBLIC WATER SUPPLY SYSTEMS— CERTIFICATION AND REGULATION OF OPERATORS

Sections

70.119.010	Legislative declaration.
70.119.020	Definitions.
70.119.030	Certified operators required for certain public water systems.
70.119.060	Public water systems—Secretary to categorize.
70.119.090	Certificates without examination—Conditions.
70.119.100	Certificates—Issuance and renewal—Conditions.
70.119.110	Certificates—Grounds for revocation.
70.119.130	Violations—Penalties.

70.119.010 Legislative declaration. The legislature declares that competent operation of a public water system is necessary for the protection of the consumers' health, and therefore it is of vital interest to the public. In order to protect the public health and conserve and protect the water resources of the state, it is necessary to provide for the classifying of all public water systems; to require the examination and certification of the persons responsible for the technical operation of such systems; and to provide for the promulgation of rules and regulations to carry out this chapter. [1991 c 305 § 1; 1983 c 292 § 1; 1977 ex.s. c 99 § 1.]

70.119.020 Definitions. As used in this chapter unless context requires another meaning:

(1) "Board" means the board established pursuant to RCW 70.95B.070 which shall be known as the water and waste water operator certification board of examiners.

(2) "Certificate" means a certificate of competency issued by the secretary stating that the operator has met the requirements for the specified operator classification of the certification program.

(3) "Certified operator" means an individual holding a valid certificate and employed or appointed by any county, water district, municipality, public or private corporation, company, institution, person, or the state of Washington and who is designated by the employing or appointing officials as the person responsible for active daily technical operation.

(4) "Department" means the department of health.

(5) "Distribution system" means that portion of a public water system which stores, transmits, pumps and distributes water to consumers.

(6) "Ground water under the direct influence of surface water" means any water beneath the surface of the ground with:

(a) Significant occurrence of insects or other macroorganisms, algae, or large diameter pathogens such as giardia lamblia; or

(b) Significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

(7) "Group A water system" means a system with fifteen or more service connections, regardless of the number of people; or a system serving an average of twenty-

five or more people per day for sixty or more days within a calendar year, regardless of the number of service connections. Group A water system does not include a system serving fewer than fifteen single-family residences, regardless of the number of people.

(8) "Nationally recognized association of certification authorities" shall mean an 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 waste water facilities and certification of operators, facilitates reciprocity between state programs and assists authorities in establishing new certification programs and updating existing ones.

(9) "Public water system" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing piped water for human consumption, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system; and collection or pretreatment storage facilities not under control of the purveyor but primarily used in connection with the system.

(10) "Purification plant" means that portion of a public water system which treats or improves the physical, chemical or bacteriological quality of the system's water to bring the water into compliance with state board of health standards.

(11) "Secretary" means the secretary of the department of health.

(12) "Service" means a connection to a public water system designed to serve a single-family residence, dwelling unit, or equivalent use. If the facility has group home or barracks-type accommodations, three persons will be considered equivalent to one service.

(13) "Surface water" means all water open to the atmosphere and subject to surface runoff. [1991 c 305 § 2; 1991 c 3 § 369; 1983 c 292 § 2; 1977 ex.s. c 99 § 2.]

Public water supply systems to comply with water quality standards: RCW 70.142.050.

70.119.030 Certified operators required for certain public water systems. (1) A public water system shall have a certified operator if:

(a) The system serves one hundred or more services in use at any one time; or

(b) It is a group A water system using a surface water source or a ground water source under the direct influence of surface water.

(2) The certified operators shall be in charge of the technical direction of a water system's operation, or an operating shift of such a system, or a major segment of a system necessary for monitoring or improving the quality of water. The operator shall be certified as provided in RCW 70.119.050.

(3) The amount of time that a certified operator shall be required to be present shall be based upon the time required to properly operate and maintain the public water system as designed and constructed in accordance

with RCW 43.20.050. The employing or appointing officials shall designate the position or positions requiring mandatory certification within their individual systems and shall assure that such certified operators are responsible for the system's technical operation.

(4) Operators not required to be certified by this chapter are encouraged to become certified on a voluntary basis. [1991 c 305 § 3; 1983 c 292 § 3; 1977 ex.s. c 99 § 3.]

70.119.060 Public water systems—Secretary to categorize. The secretary shall further categorize all public water systems with regard to the size, type, source of water, and other relevant physical conditions affecting purification plants and distribution systems to assist in identifying the skills, knowledge and experience required for the certification of operators for each category of such systems, to assure the protection of the public health and conservation and protection of the state's water resources as required under RCW 70.119.010, and to implement the provisions of the state safe drinking water act in chapter 70.119A RCW. In categorizing all public water systems for the purpose of implementing these provisions of state law, the secretary shall take into consideration economic impacts as well as the degree and nature of any public health risk. [1991 c 305 § 4; 1977 ex.s. c 99 § 6.]

70.119.090 Certificates without examination—Conditions. Certificates shall be issued without examination under the following conditions:

(1) Certificates shall be issued without application fee to operators who, on January 1, 1978, hold certificates of competency attained under the voluntary certification program sponsored jointly by the state department of social and health services, health services division, and the Pacific Northwest section of the American water works association.

(2) Certification shall be issued to persons certified by a governing body or owner of a public water system to have been the operators of a purification plant or distribution system on January 1, 1978, but only to those who are required to be certified under RCW 70.119.030(1). A certificate so issued shall be valid for operating any plant or system of the same classification and same type of water source.

(3) A nonrenewable certificate, temporary in nature, may be issued to an operator for a period not to exceed twelve months 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. [1991 c 305 § 5; 1983 c 292 § 7; 1977 ex.s. c 99 § 9.]

Effective date—1977 ex.s. c 99: See RCW 70.119.900.

70.119.100 Certificates—Issuance and renewal—Conditions. The issuance and renewal of a certificate shall be subject to the following conditions:

(1) Except as provided in RCW 70.119.090, a certificate shall be issued if the operator has satisfactorily passed a written examination, has paid the department

an application fee as established by the department under RCW 43.70.110, and has met the requirements specified in the rules and regulations as authorized by this chapter.

(2) Every certificate shall be renewed annually upon the payment of a fee as established by the department under RCW 43.70.110 and satisfactory evidence is presented to the secretary that the operator has fulfilled the continuing education requirements as prescribed by rule of the department.

(3) The secretary shall notify operators who fail to renew their certificates before the end of the year that their certificates are temporarily valid for two months following the end of the certificate year. Certificates not renewed during the two month period shall be invalid and the secretary shall so notify the holders of such certificates.

(4) An operator who has failed to renew a certificate pursuant to the provisions of this section, may reapply for certification and the secretary may require the operator to meet the requirements established for new applicants. [1991 c 305 § 6; 1987 c 75 § 11; 1983 c 292 § 8; 1982 c 201 § 13; 1977 ex.s. c 99 § 10.]

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

70.119.110 Certificates—Grounds for revocation. The secretary may, with the recommendation of the board and after 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 purification plant or distribution system; or for an intentional violation of the requirements of this chapter or any lawful rules, 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 the final order of revocation. [1991 c 305 § 7; 1983 c 292 § 9; 1977 ex.s. c 99 § 11.]

70.119.130 Violations—Penalties. Any person, including any operator or any firm, association, corporation, municipal corporation, or other governmental subdivision or agency who, after thirty days' written notice, operates a public water system which is not in compliance with RCW 70.119.030(1), shall be guilty of a misdemeanor. Each month of such operation out of compliance with RCW 70.119.030(1) 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: PROVIDED, That, except in the case of fraud, deceit, or gross negligence under RCW 70.119.110, no revocation, citation or charge shall be made under RCW 70.119.110 and 70.119.130 until a proper written notice of violation is received and a reasonable opportunity for correction has been given. [1991 c 305 § 8; 1983 c 292 § 10; 1977 ex.s. c 99 § 13.]

Effective date—1977 ex.s. c 99: See RCW 70.119.900.

Chapter 70.119A

PUBLIC WATER SYSTEMS—PENALTIES AND COMPLIANCE

Sections

- 70.119A.020 Definitions.
- 70.119A.030 Public health emergencies—Violations—Failure to comply with departmental order—Penalty.
- 70.119A.040 Penalty—Notice—Payment of fine—Action in superior court.
- 70.119A.060 Public water systems—Mandate—Department and local health jurisdiction duties.
- 70.119A.080 Drinking water program.
- 70.119A.100 Operating permits—Findings.
- 70.119A.110 Operating permits—Application process—Phase-in of implementation—Satellite systems.
- 70.119A.120 Safe drinking water account.
- 70.119A.130 Local government authority.

Drinking water quality consumer complaints: RCW 80.04.110.

70.119A.020 Definitions. Unless the context clearly requires otherwise, the following definitions apply throughout this chapter:

- (1) "Department" means the department of health.
- (2) "Local board of health" means the city, town, county, or district board of health.
- (3) "Local health jurisdiction" means an entity created under chapter 70.05, 70.08, or 70.46 RCW which provides public health services to persons within the area.
- (4) "Public water system" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing piped water for human consumption, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system; and collection or pretreatment storage facilities not under control of the purveyor but primarily used in connection with the system, including:
 - (a) Any collection, treatment, storage, and distribution facilities under control of the purveyor and used primarily in connection with such system; and
 - (b) Any collection or pretreatment storage facilities not under control of the purveyor which are primarily used in connection with such system.
- (5) "Order" means a written direction to comply with a provision of the regulations adopted under RCW 43.20.050(2)(a) or 70.119.050 or to take an action or a series of actions to comply with the regulations.
- (6) "Purveyor" means any agency or subdivision of the state or any municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity, that owns or operates a public water system. It also means the authorized agents of any such entities.
- (7) "Regulations" means rules adopted to carry out the purposes of this chapter.
- (8) "Federal safe drinking water act" means the federal safe drinking water act, 42 U.S.C. Sec. 300f et seq., as now in effect or hereafter amended.
- (9) "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.

(10) "Person" includes, but is not limited to, natural persons, municipal corporations, governmental agencies, firms, companies, mutual or cooperative associations, institutions, and partnerships. It also means the authorized agents of any such entities.

(11) "Public health emergency" means a declaration by an authorized health official of a situation in which either illness, or exposure known to cause illness, is occurring or is imminent.

(12) "Secretary" means the secretary of the department of health.

(13) "State board of health" is the board created by RCW 43.20.030. [1991 c 304 § 2; 1991 c 3 § 370; 1989 c 422 § 2; 1986 c 271 § 2.]

Requirements effective upon adoption of rules—1991 c 304: See note following RCW 70.119A.100.

70.119A.030 Public health emergencies—Violations—Failure to comply with departmental order—Penalty. (1) The secretary or his or her designee or the local health officer may declare a public health emergency. As limited by RCW 70.119A.040, the department may impose penalties for violations of laws or regulations that are determined to be a public health emergency.

(2) As limited by RCW 70.119A.040, the department may impose penalties for failure to comply with an order of the department, or of an authorized local board of health, when the order:

(a) Directs any person to stop work on the construction or alteration of a public water system when plans and specifications for the construction or alteration have not been approved as required by the regulations, or when the work is not being done in conformity with approved plans and specifications;

(b) Requires any person to eliminate a cross-connection to a public water system by a specified time; or

(c) Requires any person to cease violating any regulation relating to public water systems, to take specific actions within a specified time to place a public water system in compliance with regulations adopted under chapters 43.20 and 70.119 RCW, to apply for an operating permit as required under RCW 70.119A.110 or to comply with any conditions or requirements imposed as part of an operating permit. [1991 c 304 § 3; 1989 c 422 § 6; 1986 c 271 § 3.]

Requirements effective upon adoption of rules—1991 c 304: See note following RCW 70.119A.100.

70.119A.040 Penalty—Notice—Payment of fine—Action in superior court. (1) In addition to or as an alternative to any other penalty provided by law, every person who commits any of the acts or omissions in RCW 70.119A.030 shall be subjected to a penalty in an amount of not less than five hundred dollars. The maximum penalty shall be not more than five thousand dollars per day for every such violation. Every such violation shall be a separate and distinct offense. The amount of fine shall reflect the health significance of the

violation and the previous record of compliance on the part of the public water supplier. 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 provided in this section.

(2) The penalty provided for in this section shall be imposed by a notice in writing to the person against whom the civil fine is assessed and shall describe the violation. The notice shall be personally served in the manner of service of a summons in a civil action or in a manner that shows proof of receipt. A penalty imposed by this section is due twenty-eight days after receipt of notice unless application for remission or mitigation is made as provided in subsection (3) of this section or unless application for an adjudicative proceeding is filed as provided in subsection (4) of this section.

(3) Within fourteen 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, giving consideration to the degree of hazard associated with the violation, provided the department deems such remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department shall not mitigate the fines below the minimum penalty prescribed in subsection (1) of this section. The department shall have authority to ascertain the facts regarding all such applications in such reasonable manner as it may deem proper. When an application for remission or mitigation is made, a penalty incurred under this section is due twenty-eight days after receipt of the notice setting forth the disposition of the application, unless an application for an adjudicative proceeding to contest the disposition is filed as provided in subsection (4) of this section.

(4) Within twenty-eight days after notice is received, the person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter 34.05 RCW and applicable rules of the department or board of health.

(5) A penalty imposed by a final order after an adjudicative proceeding is due upon service of the final order.

(6) The attorney general may bring an action in the name of the department in the superior court of Thurston county, or of any county in which such violator may do business, to collect a penalty.

(7) All penalties imposed under this section shall be payable to the state treasury and credited to the general fund. [1990 c 133 § 8; 1989 c 175 § 135; 1986 c 271 § 4.]

Findings—Severability—1990 c 133: See notes following RCW 36.94.140.

Effective date—1989 c 175: See note following RCW 34.05.010.

70.119A.060 Public water systems—Mandate—Department and local health jurisdiction duties. (1) In

order to assure safe and reliable public drinking water and to protect the public health, public water systems shall:

- (a) Protect the water sources used for drinking water;
- (b) Provide treatment adequate to assure that the public health is protected;
- (c) Provide and effectively operate and maintain public water system facilities;
- (d) Plan for future growth and assure the availability of safe and reliable drinking water;
- (e) Provide the department with the current names, addresses, and telephone numbers of the owners, operators, and emergency contact persons for the system, including any changes to this information, and provide to users the name and twenty-four hour telephone number of an emergency contact person; and
- (f) Take whatever investigative or corrective action is necessary to assure that a safe and reliable drinking water supply is continuously available to users.

(2) The department and local health jurisdictions shall carry out the rules and regulations of the state board of health adopted pursuant to RCW 43.20.050(2)(a) and other rules adopted by the department relating to public water systems. [1991 c 304 § 4; 1990 c 132 § 4; 1989 c 422 § 3.]

Requirements effective upon adoption of rules—1991 c 304: See note following RCW 70.119A.100.

Legislative findings—Severability—1990 c 132: See notes following RCW 43.20.240.

70.119A.080 Drinking water program. (1) The department shall administer a drinking water program which includes, but is not limited to, those program elements necessary to assume primary enforcement responsibility for part B, and section 1428 of part C of the federal safe drinking water act. No rule promulgated or implemented by the department of health or the state board of health for the purpose of compliance with the requirements of the federal safe drinking water act, 42 U.S.C. Sec. 300f et seq., shall be applicable to public water systems to which that federal law is not applicable, unless the department or the state board determines that such rule is necessary for the protection of public health.

(2) The department shall enter into an agreement of administration with the department of ecology and any other appropriate agencies, to administer the federal safe drinking water act.

(3) The department is authorized to accept federal grants for the administration of a primary program. [1991 c 3 § 371; 1989 c 422 § 5.]

70.119A.100 Operating permits—Findings. The legislature finds that:

(1) The responsibility for ensuring that the citizens of this state have a safe and reliable drinking water supply is shared between local government and state government, and is the obligation of every public water system;

(2) A rapid increase in the number of public water systems supplying drinking water to the citizens of this state has significantly increased the burden on both local

and state government to monitor and enforce compliance by these systems with state laws that govern planning, design, construction, operation, maintenance, financing, management, and emergency response;

(3) The federal safe drinking water act imposes on state and local governments and the public water systems of this state significant new responsibilities for monitoring, testing, and treating drinking water supplies; and

(4) Existing drinking water programs at both the state and local government level need additional authorities to enable them to more comprehensively and systematically address the needs of the public water systems of this state and assure that the public health and safety of its citizens are protected.

Therefore, annual operating permit requirements shall be established in accordance with this chapter. The operating permit requirements shall be administered by the department and shall be used as a means to assure that public water systems provide safe and reliable drinking water to the public. The department and local government shall conduct comprehensive and systematic evaluations to assess the adequacy and financial viability of public water systems. The department may impose permit conditions, requirements for system improvements, and compliance schedules in order to carry out the purpose of *this act. [1991 c 304 § 1.]

***Reviser's note:** For codification of "this act" [1991 c 304], see Codification Tables, Supplement Volume 9A.

Requirements effective upon adoption of rules—1991 c 304: "The department shall adopt rules necessary to implement sections 5 through 7 of this act. The requirements of this act shall take effect upon adoption of rules pursuant to this act." [1991 c 304 § 8.]

70.119A.110 Operating permits—Application process—Phase-in of implementation—Satellite systems. (1) No person may operate a group A public water system unless the person first submits an application to the department and receives an operating permit as provided in this section. A new application must be submitted upon any change in ownership of the system. Any person operating a public water system on July 28, 1991, may continue to operate the system until the department takes final action, including any time necessary for a hearing under subsection (3) of this section, on a permit application submitted by the person operating the system under the rules adopted by the department to implement this section.

(2) The department may require that each application include the information that is reasonable and necessary to determine that the system complies with applicable standards and requirements of the federal safe drinking water act, state law, and rules adopted by the department or by the state board of health.

(3) Following its review of the application, its supporting material, and any information received by the department in its investigation of the application, the department shall issue or deny the operating permit. The department shall act on initial permit applications as expeditiously as possible, and shall in all cases either grant or deny the application within one hundred twenty days

of receipt of the application or of any supplemental information required to complete the application. The applicant for a permit shall be entitled to file an appeal in accordance with chapter 34.05 RCW if the department denies the initial or subsequent applications or imposes conditions or requirements upon the operator. Any operator of a public water system that requests a hearing may continue to operate the system until a decision is issued after the hearing.

(4) At the time of initial permit application or at the time of permit renewal the department may impose such permit conditions, requirements for system improvements, and compliance schedules as it determines are reasonable and necessary to ensure that the system will provide a safe and reliable water supply to its users.

(5) Operating permits shall be issued for a term of one year, and shall be renewed annually, unless the operator fails to apply for a new permit or the department finds good cause to deny the application for renewal.

(6) Each application shall be accompanied by an annual fee as follows:

(a) The annual fee for public water supply systems serving fifteen to forty-nine service connections shall be twenty-five dollars.

(b) The annual fee for public water supply systems serving fifty to three thousand three hundred thirty-three service connections shall be based on a uniform per service connection fee of one dollar and fifty cents per service connection.

(c) The annual fee for public water supply systems serving three thousand three hundred thirty-four to fifty-three thousand three hundred thirty-three service connections shall be based on a uniform per service connection fee of one dollar and fifty cents per service connection plus ten cents for each service connection in excess of three thousand three hundred thirty-three service connections.

(d) The annual fee for public water supply systems serving fifty-three thousand three hundred thirty-four or more service connections shall be ten thousand dollars.

(e) In addition to the fees under (a) through (d) of this subsection, the department may charge an additional one-time fee of five dollars for each service connection in a new water system.

(7) The department may phase-in the implementation for any group of systems provided the schedule for implementation is established by rule. Prior to implementing the operating permit requirement on water systems having less than five hundred service connections, the department shall form a committee composed of persons operating these systems. The committee shall be composed of the department of health, two operators of water systems having under one hundred connections, two operators of water systems having between one hundred and two hundred service connections, two operators of water systems having between two hundred and three hundred service connections, two operators of water systems having between three hundred and four hundred

service connections, two operators of water systems having between four hundred and five hundred service connections, and two county public health officials. The members shall be chosen from different geographic regions of the state. This committee shall develop draft rules to implement this section. The draft rules will then be subject to the rule-making procedures in accordance with chapter 34.05 RCW.

(8) The department shall notify existing public water systems of the requirements of RCW 70.119A.030, 70.119A.060, and this section at least one hundred twenty days prior to the date that an application for a permit is required pursuant to RCW 70.119A.030, 70.119A.060, and this section.

(9) The department shall issue one operating permit to any approved satellite system management agency. Operating permit fees for approved satellite system management agencies shall be one dollar per connection per year for the total number of connections under the management of the approved satellite agency. The department shall define by rule the meaning of the term "satellite system management agency." If a statutory definition of this term exists, then the department shall adopt by rule a definition consistent with the statutory definition.

(10) For purposes of this section, "group A public water system" and "system" mean those water systems with fifteen or more service connections, regardless of the number of people; or a system serving an average of twenty-five or more people per day for sixty or more days within a calendar year, regardless of the number of service connections. [1991 c 304 § 5.]

Requirements effective upon adoption of rules—1991 c 304: See note following RCW 70.119A.100.

70.119A.120 Safe drinking water account. The safe drinking water account is created in the general fund of the state treasury. All receipts from the operating permit fees required to be paid under RCW 70.119A.110 shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used by the department of health to carry out the purposes of *this act and to carry out contracts with local governments in accordance with this chapter. [1991 c 304 § 6.]

***Reviser's note:** For codification of "this act" [1991 c 304], see Codification Tables, Supplement Volume 9A.

Requirements effective upon adoption of rules—1991 c 304: See note following RCW 70.119A.100.

70.119A.130 Local government authority. Until July 1, 1996, local governments shall be prohibited from administering a separate operating permit requirement for public water systems. After July 1, 1996, local governments may establish separate operating permit requirements for public water systems provided the operating permit requirements have been approved by the department. The department shall not approve local operating permit requirements unless the local system will result in an increased level of service to the public water system.

There shall not be duplicate operating permit requirements imposed by local governments and the department. [1991 c 304 § 7.]

Requirements effective upon adoption of rules—1991 c 304: See note following RCW 70.119A.100.

Chapter 70.120

MOTOR VEHICLE EMISSION CONTROL

Sections

70.120.010	Definitions.
70.120.020	Programs. (Effective January 1, 1993.)
70.120.070	Vehicle inspections—Failed—Certificate of acceptance. (Effective January 1, 1993.)
70.120.080	Vehicle inspections—Fleets. (Effective January 1, 1993.)
70.120.110	Repealed.
70.120.120	Rules. (Effective January 1, 1993.)
70.120.140	Repealed.
70.120.150	Vehicle emission and equipment standards—Designation of noncompliance areas and emission contributing areas. (Effective January 1, 1993.)
70.120.170	Motor vehicle emission inspections—Fees—Certificate of compliance—State and local agency vehicles. (Effective January 1, 1993.)
70.120.190	Used vehicles. (Effective January 1, 1992.)
70.120.200	Engine conformance.
70.120.210	Clean-fuel performance and clean-fuel vehicle emissions specifications.
70.120.220	Clean fuel—Biennial report to legislature.
70.120.900	Repealed.

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

(1) "Department" means the department of ecology.

(2) "Director" means the director of the department of ecology.

(3) "Fleet" means a group of fifteen or more motor vehicles registered in the same name and whose owner has been assigned a fleet identifier code by the department of licensing.

(4) "Motor vehicle" means any self-propelled vehicle required to be licensed pursuant to chapter 46.16 RCW.

(5) "Motor vehicle dealer" means a motor vehicle dealer, as defined in RCW 46.70.011, that is licensed pursuant to chapter 46.70 RCW.

(6) "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision of the state, municipality, or governmental agency.

(7) The terms "air contaminant," "air pollution," "air quality standard," "ambient air," "emission," and "emission standard" have the meanings given them in RCW 70.94.030. [1991 c 199 § 201; 1979 ex.s. c 163 § 1.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Severability—1979 ex.s. c 163: "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." [1979 ex.s. c 163 § 19.]

70.120.020 Programs. (Effective January 1, 1993.)

(1) The department shall conduct a public educational program regarding the health effects of air pollution emitted by motor vehicles; the purpose, operation, and effect of emission control devices and systems; and the effect that proper maintenance of motor vehicle engines has on fuel economy and air pollution emission and a public notification program identifying the geographic areas of the state that are designated as being noncompliance areas and emission contributing areas and describing the requirements imposed under this chapter for those areas.

(2)(a) The department shall grant certificates of instruction to persons who successfully complete a course of study, under general requirements established by the director, in the maintenance of motor vehicle engines, the use of engine and exhaust analysis equipment, and the repair and maintenance of emission control devices. The director may establish and implement procedures for granting certification to persons who successfully complete other training programs or who have received certification from public and private organizations which meet the requirements established in this subsection, including programs on clean fuel technology and maintenance.

(b) The department shall make available to the public a list of those persons who have received certificates of instruction under subsection (2)(a) of this section. [1991 c 199 § 202; 1989 c 240 § 5; 1979 ex.s. c 163 § 2.]

Intent—1991 c 199: "(1) It is the intent of the legislature that the state take advantage of the best emission control systems available on new motor vehicles. The department shall conduct a study to determine if requiring new vehicles sold in the state to meet California vehicle emission standards will provide a significant benefit to attainment of ambient air quality standards in this state. The department shall report the findings of its study and its recommendations to the appropriate standing committees of the legislature. The department shall not adopt the California vehicle emission standards unless authorized by the legislature.

(2) In the event that California vehicle emission standards are adopted, the department shall not include a program for in-use testing and recall of vehicles required to meet California emission standards." [1991 c 199 § 229.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

70.120.070 Vehicle inspections—Failed—Certificate of acceptance. (Effective January 1, 1993.) (1) Any person:

(a) Whose motor vehicle is tested pursuant to this chapter and fails to comply with the emission standards established for the vehicle; and

(b) Who, following such a test, expends more than one hundred dollars on a 1980 or earlier model year motor vehicle or expends more than one hundred fifty dollars on a 1981 or later model year motor vehicle for repairs solely devoted to meeting the emission standards and that are performed by a certified emission specialist authorized by RCW 70.120.020(2)(a); and

(c) Whose vehicle fails a retest, may be issued a certificate of acceptance if (i) the vehicle has been in use

for more than five years or fifty thousand miles, and (ii) any component of the vehicle installed by the manufacturer for the purpose of reducing emissions, or its appropriate replacement, is installed and operative.

To receive the certificate, the person must document compliance with (b) and (c) of this subsection to the satisfaction of the department.

Should any provision of (b) of this subsection be disapproved by the administrator of the United States environmental protection agency, all vehicles shall be required to expend at least four hundred fifty dollars to qualify for a certificate of acceptance.

(2) Persons who fail the initial tests shall be provided with information regarding the availability of federal warranties and certified emission specialists. [1991 c 199 § 203; 1989 c 240 § 6; 1980 c 176 § 4; 1979 ex.s. c 163 § 7.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—**Severability**—**Captions not law**—1991 c 199: See RCW 70.94.904 through 70.94.906.

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

70.120.080 Vehicle inspections—Fleets. (Effective January 1, 1993.) The director may authorize an owner or lessee of a fleet of motor vehicles, or the owner's or lessee's agent, to inspect the vehicles in the fleet and issue certificates of compliance for the vehicles in the fleet if the director determines that: (1) The director's inspection procedures will be complied with; and (2) certificates will be issued only to vehicles in the fleet that meet emission and equipment standards adopted under RCW 70.120.150 and only when appropriate.

In addition, the director may authorize an owner or lessee of one or more diesel motor vehicles with a gross vehicle weight rating in excess of eight thousand five hundred pounds, or the owner's or lessee's agent, to inspect the vehicles and issue certificates of compliance for the vehicles. The inspections shall be conducted in compliance with inspection procedures adopted by the department and certificates of compliance shall only be issued to vehicles that meet emission and equipment standards adopted under RCW 70.120.150.

The director shall establish by rule the fee for fleet or diesel inspections provided for in this section. The fee shall be set at an amount necessary to offset the department's cost to administer the fleet and diesel inspection program authorized by this section.

Owners, leaseholders, or their agents conducting inspections under this section shall pay only the fee established in this section and not be subject to fees under RCW 70.120.170(4). [1991 c 199 § 205; 1979 ex.s. c 163 § 8.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—**Severability**—**Captions not law**—1991 c 199: See RCW 70.94.904 through 70.94.906.

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

70.120.110 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

70.120.120 Rules. (Effective January 1, 1993.) The director shall adopt rules implementing and enforcing this chapter in accordance with chapter 34.05 RCW. The department shall take into account when considering proposed modifications of emission contributing boundaries, as provided for in RCW 70.120.150(6), alternative transportation control and motor vehicle emission reduction measures that are required by local municipal corporations for the purpose of satisfying federal emission guidelines. [1991 c 199 § 206; 1989 c 240 § 8; 1979 ex.s. c 163 § 13.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—**Severability**—**Captions not law**—1991 c 199: See RCW 70.94.904 through 70.94.906.

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

70.120.140 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

70.120.150 Vehicle emission and equipment standards—Designation of noncompliance areas and emission contributing areas. (Effective January 1, 1993.) The director:

(1) Shall adopt motor vehicle emission and equipment standards to: Ensure that no less than seventy percent of the vehicles tested comply with the standards on the first inspection conducted, meet federal clean air act requirements, and protect human health and the environment.

(2) Shall adopt rules implementing the smoke opacity testing requirement for diesel vehicles that ensure that such test is objective and repeatable and that properly maintained engines that otherwise would meet the applicable federal emission standards, as measured by the new engine certification test, would not fail the smoke opacity test.

(3) Shall designate a geographic area as being a "noncompliance area" for motor vehicle emissions if (a) the department's analysis of emission and ambient air quality data, covering a period of no less than one year, indicates that the standard has or will probably be exceeded, and (b) the department determines that the primary source of the air contaminant is motor vehicle emissions.

(4) Shall reevaluate noncompliance areas if the United States environmental protection agency modifies the relevant air quality standards, and shall discontinue the program if compliance is indicated and if the department determines that the area would continue to be in compliance after the program is discontinued. The director shall notify persons residing in noncompliance areas of the reevaluation.

(5) Shall analyze information regarding the motor vehicle traffic in a noncompliance area to determine the smallest land area within whose boundaries are present registered motor vehicles that contribute significantly to the violation of motor vehicle-related air quality standards in the noncompliance area. The director shall declare the area to be an "emission contributing area." An emission contributing area established for a carbon

monoxide or oxides of nitrogen noncompliance area must contain the noncompliance area within its boundaries. An emission contributing area established for an ozone noncompliance area located in this state need not contain the ozone noncompliance area within its boundaries if it can be proven that vehicles registered in the area contribute significantly to violations of the ozone air quality standard in the noncompliance area. An emission contributing area may be established in this state for violations of federal air quality standards for ozone in an adjacent state if (a) the United States environmental protection agency designates an area to be a "nonattainment area for ozone" under the provisions of the federal Clean Air Act (42 U.S.C. 7401 et. seq.), and (b) it can be proven that vehicles registered in this state contribute significantly to the violation of the federal air quality standards for ozone in the adjacent state's nonattainment area.

(6) Shall, after consultation with the appropriate local government entities, designate areas as being noncompliance areas or emission contributing areas, and shall establish the boundaries of such areas by rule. The director may also modify boundaries. In establishing the external boundaries of an emission contributing area, the director shall use the boundaries established for ZIP code service areas by the United States postal service.

(7) May make grants to units of government in support of planning efforts to reduce motor vehicle emissions. [1991 c 199 § 207; 1989 c 240 § 2.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—**Severability**—**Captions not law**—1991 c 199: See RCW 70.94.904 through 70.94.906.

70.120.170 Motor vehicle emission inspections—Fees—Certificate of compliance—State and local agency vehicles. (Effective January 1, 1993.) (1) The department shall administer a system for emission inspections of all motor vehicles registered within the boundaries of each emission contributing area. Under such system a motor vehicle shall be inspected biennially except where an annual program would be required to meet federal law and prevent federal sanctions. In addition, motor vehicles shall be inspected at each change of registered owner of a licensed vehicle.

(2) The director shall:

(a) Adopt procedures for conducting emission inspections of motor vehicles. The inspections may include idle and high revolution per minute emission tests. The emission test for diesel vehicles shall consist solely of a smoke opacity test.

(b) Adopt criteria for calibrating emission testing equipment. Electronic equipment used to test for emissions standards provided for in this chapter shall be properly calibrated. The department shall examine frequently the calibration of the emission testing equipment used at the stations.

(c) Authorize, through contracts, the establishment and operation of inspection stations for conducting vehicle emission inspections authorized in this chapter. No person contracted to inspect motor vehicles may perform for compensation repairs on any vehicles. No public

body may establish or operate contracted inspection stations. Any contracts must be let in accordance with the procedures established for competitive bids in chapter 43.19 RCW.

(3) Subsection (2)(c) of this section does not apply to volunteer motor vehicle inspections under RCW 70.120.020(1) if the inspections are conducted for the following purposes:

(a) Auditing;

(b) Contractor evaluation;

(c) Collection of data for establishing calibration and performance standards; or

(d) Public information and education.

(4)(a) The director shall establish by rule the fee to be charged for emission inspections. The inspection fee shall be a standard fee applicable state-wide or throughout an emission contributing area and shall be no greater than eighteen dollars. Surplus moneys collected from fees over the amount due the contractor shall be paid to the state and deposited in the general fund. Fees shall be set at the minimum whole dollar amount required to (i) compensate the contractor or inspection facility owner, and (ii) offset the general fund appropriation to the department to cover the administrative costs of the motor vehicle emission inspection program.

(b) Before each inspection, a person whose motor vehicle is to be inspected shall pay to the inspection station the fee established under this section. The person whose motor vehicle is inspected shall receive the results of the inspection. If the inspected vehicle complies with the standards established by the director, the person shall receive a dated certificate of compliance. If the inspected vehicle does not comply with those standards, one reinspection of the vehicle shall be afforded without charge.

(5) All units of local government and agencies of the state with motor vehicles garaged or regularly operated in an emissions contributing area shall test the emissions of those vehicles annually to ensure that the vehicle's emissions comply with the emission standards established by the director. All state agencies outside of emission contributing areas with more than twenty motor vehicles housed at a single facility or contiguous facilities shall test the emissions of those vehicles annually to ensure that the vehicles' emissions comply with standards established by the director. A report of the results of the tests shall be submitted to the department. [1991 c 199 § 208; 1989 c 240 § 4.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—**Severability**—**Captions not law**—1991 c 199: See RCW 70.94.904 through 70.94.906.

70.120.190 Used vehicles. (Effective January 1, 1992.) (1) Motor vehicle dealers selling a used vehicle not under a new vehicle warranty shall include a notice in each vehicle purchase order form that reads as follows: "The owner of a vehicle may be required to spend up to (a dollar amount established under RCW 70.120-.070) for repairs if the vehicle does not meet the vehicle emission standards under this chapter. Unless expressly

warranted by the motor vehicle dealer, the dealer is not warranting that this vehicle will pass any emission tests required by federal or state law."

(2) The signature of the purchaser on the notice required under subsection (1) of this section shall constitute a valid disclaimer of any implied warranty by the dealer as to a vehicle's compliance with any emission standards.

(3) The disclosure requirement of subsection (1) of this section applies to all motor vehicle dealers located in counties where state emission inspections are required. [1991 c 199 § 210.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

70.120.200 Engine conformance. Engine manufacturers shall certify that new engines conform with current exhaust emission standards of the federal environmental protection agency. [1991 c 199 § 211.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

70.120.210 Clean-fuel performance and clean-fuel vehicle emissions specifications. By July 1, 1992, the department shall develop, in cooperation with the departments of general administration and transportation, and the state energy office, aggressive clean-fuel performance and clean-fuel vehicle emissions specifications including clean-fuel vehicle conversion equipment. To the extent possible, such specifications shall be equivalent for all fuel types. In developing such specifications the department shall consider the requirements of the clean air act and the findings of the environmental protection agency, other states, the American petroleum institute, the gas research institute, and the motor vehicles manufacturers association. [1991 c 199 § 212.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Clean-fuel grants: RCW 70.94.960.

70.120.220 Clean fuel—Biennial report to legislature. The department, in cooperation with the departments of general administration and transportation, the utilities and transportation commission, and the state energy office, shall biennially prepare a report to the legislature starting July 1, 1992, on:

(1) Progress of clean fuel and clean-fuel vehicle programs in reducing automotive emissions;

(2) Recommendations for enhancing clean-fuel distribution systems;

(3) Efforts of the state, units of local government, and the private sector to evaluate and utilize "clean fuel" or "clean-fuel vehicles"; and

(4) Recommendations for changes in the existing program to make it more effective and, if warranted, for expansion of the program. [1991 c 199 § 215.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

70.120.900 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 70.121

MILL TAILINGS—LICENSING AND PERPETUAL CARE

Sections

70.121.020 Definitions.

70.121.020 Definitions. Unless the context clearly requires a different meaning, the definitions in this section apply throughout this chapter.

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

(2) "Secretary" means the secretary of health.

(3) "Site" means the restricted area as defined by the United States nuclear regulatory commission.

(4) "Tailings" means the residue remaining after extraction of uranium or thorium from the ore whether or not the residue is left in piles, but shall not include ore bodies nor ore stock piles.

(5) "License" means a radioactive materials license issued under chapter 70.98 RCW and the rules adopted under chapter 70.98 RCW.

(6) "Termination of license" means the cancellation of the license after permanent cessation of operations. Temporary interruptions or suspensions of production due to economic or other conditions are not a permanent cessation of operations.

(7) "Milling" means grinding, cutting, working, or concentrating ore which has been extracted from the earth by mechanical (conventional) or chemical (in situ) processes.

(8) "Obligor—licensee" means any person who obtains a license to operate a uranium or thorium mill in the state of Washington or any person who owns the property on which the mill operates and who owes money to the state for the licensing fee, for reclamation of the site, for perpetual surveillance and maintenance of the site, or for any other obligation owed the state under this chapter.

(9) "Statement of claim" means the document recorded or filed pursuant to this chapter, which names an obligor—licensee, names the state as obligee, describes the obligation owed to the state, and describes property owned by the obligor—licensee on which a lien will attach for the benefit of the state, and which creates the lien when filed. [1991 c 3 § 372; 1987 c 184 § 1; 1982 c 78 § 1; 1979 ex.s. c 110 § 2.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

Chapter 70.123

SHELTERS FOR VICTIMS OF DOMESTIC VIOLENCE

Sections

70.123.020	Definitions.
70.123.075	Client records.
70.123.130	Technical assistance grant program—Local communities.
70.123.140	Technical assistance grant for county plans.

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

(1) "Shelter" means a place of temporary refuge, offered on a twenty-four hour, seven day per week basis to victims of domestic violence and their children.

(2) "Domestic violence" is a categorization of offenses, as defined in RCW 10.99.020, committed by one cohabitant against another.

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

(4) "Victim" means a cohabitant who has been subjected to domestic violence.

(5) "Cohabitant" means a person who is married or who is cohabiting with a person of the opposite sex like husband and wife at the present or at sometime in the past. Any person who has one or more children in common with another person, regardless of whether they have been married or lived together at any time, shall be treated as a cohabitant.

(6) "Community advocate" means a person employed by a local domestic violence program to provide ongoing assistance to victims of domestic violence in assessing safety needs, documenting the incidents and the extent of violence for possible use in the legal system, making appropriate social service referrals, and developing protocols and maintaining ongoing contacts necessary for local systems coordination.

(7) "Domestic violence program" means an agency that provides shelter, advocacy, and counseling for domestic violence victims in a supportive environment.

(8) "Legal advocate" means a person employed by a domestic violence program or court system to advocate for victims of domestic violence, within the criminal and civil justice systems, by attending court proceedings, assisting in document and case preparation, and ensuring linkage with the community advocate.

(9) "Secretary" means the secretary of the department of social and health services or the secretary's designee. [1991 c 301 § 9; 1979 ex.s. c 245 § 2.]

Finding—1991 c 301: See note following RCW 10.99.020.

70.123.075 Client records. Client records maintained by domestic violence programs shall not be subject to discovery in any judicial proceeding unless:

(1) A written pretrial motion is made to a court stating that discovery is requested of the client's domestic violence records;

(2) The written motion is accompanied by an affidavit or affidavits setting forth specifically the reasons why

discovery is requested of the domestic violence program's records;

(3) The court reviews the domestic violence program's records in camera to determine whether the domestic violence program's records are relevant and whether the probative value of the records is outweighed by the victim's privacy interest in the confidentiality of such records, taking into account the further trauma that may be inflicted upon the victim by the disclosure of the records; and

(4) The court enters an order stating whether the records or any part of the records are discoverable and setting forth the basis for the court's findings. [1991 c 301 § 10.]

Finding—1991 c 301: See note following RCW 10.99.020.

70.123.130 Technical assistance grant program—Local communities. The department of social and health services shall establish a technical assistance grant program to assist local communities in determining how to respond to domestic violence. The goals of the program shall be to coordinate and expand existing services to:

(1) Serve any individual affected by domestic violence with the primary focus being the safety of the victim;

(2) Assure an integrated, comprehensive, accountable community response that is adequately funded and sensitive to the diverse needs of the community;

(3) Create a continuum of services that range from prevention, crisis intervention, and counseling through shelter, advocacy, legal intervention, and representation to longer term support, counseling, and training; and

(4) Coordinate the efforts of government, the legal system, the private sector, and a range of service providers, such as doctors, nurses, social workers, teachers, and child care workers. [1991 c 301 § 11.]

Finding—1991 c 301: See note following RCW 10.99.020.

70.123.140 Technical assistance grant for county plans. (1) A county or group of counties may apply to the department for a technical assistance grant to develop a comprehensive county plan for dealing with domestic violence. The county authority may contract with a local nonprofit entity to develop the plan.

(2) County comprehensive plans shall be developed in consultation with the department, domestic violence programs, schools, law enforcement, and health care, legal, and social service providers that provide services to persons affected by domestic violence.

(3) County comprehensive plans shall be based on the following principles:

(a) The safety of the victim is primary;

(b) The community needs to be well-educated about domestic violence;

(c) Those who want to and who should intervene need to know how to do so effectively;

(d) Adequate services, both crisis and long-term support, should exist throughout all parts of the county;

(e) Police and courts should hold the batterer accountable for his or her crimes;

(f) Treatment for batterers should be provided by qualified counselors; and

(g) Coordination teams are needed to ensure that the system continues to work over the coming decades.

(4) County comprehensive plans shall provide for the following:

(a) Public education about domestic violence;

(b) Training for professionals on how to recognize domestic violence and assist those affected by it;

(c) Development of protocols among agencies so that professionals respond to domestic violence in an effective, consistent manner;

(d) Development of services to victims of domestic violence and their families, including shelters, safe homes, transitional housing, community and legal advocates, and children's services; and

(e) Local and regional teams to oversee implementation of the system, ensure that efforts continue over the years, and assist with day-to-day and system-wide coordination. [1991 c 301 § 12.]

Finding—1991 c 301: See note following RCW 10.99.020.

Chapter 70.125

VICTIMS OF SEXUAL ASSAULT ACT

Sections

70.125.080 Rape crisis centers—Victim advocates.

70.125.080 Rape crisis centers—Victim advocates.

(1) Rape crisis centers which are eligible for funding from the department of social and health services under chapter 70.125 RCW may apply for grants for the purpose of hiring and training victim advocates to assist victims and their families through the investigation and prosecution of sexual assault cases. The victim advocates shall complete a training program either through the criminal justice training program under RCW 43.101.270 or, at the election of the rape crisis center, a training program to be designed and administered by the Washington association of prosecuting attorneys and the Washington coalition of sexual assault programs.

(2) Twenty-five percent of the funding for the victim advocate grants under this section must be provided by one or more local, municipal, or county source, either public or private. The department shall seek, receive, and make use of any funds which may be available from federal or other sources to augment state funds appropriated for the purpose of this section, and shall make every effort to qualify for federal funding. [1991 c 267 § 3.]

Findings—Effective date—1991 c 267: See notes following RCW 43.101.270.

Victims of crimes: Chapter 7.69 RCW.

Chapter 70.127

HOME HEALTH, HOSPICE, AND HOME CARE AGENCIES—LICENSURE

Sections

70.127.010 Definitions.

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

(1) "Branch office" means a location or site from which a home health, hospice, or home care agency provides services within a portion of the total geographic area served by the parent agency. The branch office is part of the agency and is located sufficiently close to share administration, supervision, and services.

(2) "Department" means the department of health.

(3) "Home care agency" means a private or public agency or organization that administers or provides home care services directly or through a contract arrangement to ill, disabled, or infirm persons in places of temporary or permanent residence.

(4) "Home care services" means personal care services, homemaker services, respite care services, or any other nonmedical services provided to ill, disabled, or infirm persons which services enable these persons to remain in their own residences consistent with their desires, abilities, and safety.

(5) "Home health agency" means a private or public agency or organization that administers or provides home health aide services or two or more home health services directly or through a contract arrangement to ill, disabled, or infirm persons in places of temporary or permanent residence.

(6) "Home health services" means health or medical services provided to ill, disabled, or infirm persons. These services may be of an acute or maintenance care nature, and include but are not limited to nursing services, home health aide services, physical therapy services, occupational therapy services, speech therapy services, respiratory therapy services, nutritional services, medical social services, and medical supplies or equipment services.

(7) "Home health aide services" means services provided by a home health agency or a hospice under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist. Such care includes ambulation and exercise, assistance with self-administered medications, reporting changes in patients' conditions and needs, completing appropriate records, and personal care or homemaker services needed to achieve medically desired results.

(8) "Homemaker services" means services that assist ill, disabled, or infirm persons with household tasks essential to achieving adequate household and family management.

(9) "Hospice agency" means a private or public agency or organization administering or providing hospice care directly or through a contract arrangement to

terminally ill persons in places of temporary or permanent residence by using an interdisciplinary team composed of at least nursing, social work, physician, and pastoral or spiritual counseling.

(10) "Hospice care" means: (a) Palliative care provided to a terminally ill person in a place of temporary or permanent residence that alleviates physical symptoms, including pain, as well as alleviates the emotional and spiritual discomfort associated with dying; and (b) bereavement care provided to the family of a terminally ill person that alleviates the emotional and spiritual discomfort associated with the death of a family member. Hospice care may include health and medical services and personal care, respite, or homemaker services. Family means individuals who are important to and designated by the patient, and who need not be relatives.

(11) "Ill, disabled, or infirm persons" means persons who need home health, hospice, or home care services in order to maintain themselves in their places of temporary or permanent residence.

(12) "Personal care services" means services that assist ill, disabled, or infirm persons with dressing, feeding, and personal hygiene to facilitate self-care.

(13) "Respite care services" means services that assist or support the primary care giver on a scheduled basis. [1991 c 3 § 373; 1988 c 245 § 2.]

Chapter 70.128

ADULT FAMILY HOMES

Sections

70.128.055	Operating without license—Misdemeanor.
70.128.057	Operating without a license—Injunction.
70.128.105	Injunction if conditions warrant.

70.128.055 Operating without license—Misdemeanor. A person operating or maintaining an adult family home without a license under this chapter is guilty of a misdemeanor. Each day of a continuing violation after conviction is considered a separate offense. [1991 c 40 § 1.]

70.128.057 Operating without a license—Injunction. Notwithstanding the existence or use 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 in the proceedings, maintain an action in the name of the state for an injunction or other process against a person to restrain or prevent the operation or maintenance of an adult family home without a license under this chapter. [1991 c 40 § 2.]

70.128.105 Injunction if conditions warrant. The department may commence an action in superior court to enjoin the operation of an adult family home if it finds that conditions there constitute an imminent danger to residents. [1991 c 40 § 3.]

Chapter 70.142

CHEMICAL CONTAMINANTS AND WATER QUALITY

Sections

70.142.020	Establishment of monitoring requirements for chemical contaminants in public water supplies by state board of health.
70.142.040	Establishment of water quality standards by local health department in large counties.
70.142.050	Noncomplying public water supply systems—Submission of corrective plan—Notification to system's customers.

70.142.020 Establishment of monitoring requirements for chemical contaminants in public water supplies by state board of health. The state board of health shall conduct public hearings and establish by rule monitoring requirements for chemical contaminants in public water supplies. Results of tests conducted pursuant to such requirements shall be submitted to the department of health and to the local health department. The state board of health may review and revise monitoring requirements for chemical contaminants. [1991 c 3 § 374; 1984 c 187 § 2.]

70.142.040 Establishment of water quality standards by local health department in large counties. Each local health department serving a county with a population of one hundred twenty-five thousand or more may establish water quality standards for its jurisdiction more stringent than standards established by the state board of health. Each local health department establishing such standards shall base the standards on the best available scientific information. [1991 c 363 § 145; 1984 c 187 § 3.]

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

70.142.050 Noncomplying public water supply systems—Submission of corrective plan—Notification to system's customers. Public water supply systems as defined by RCW 70.119.020 that the state board of health or local health department determines do not comply with the water quality standards applicable to the system shall immediately initiate preparation of a corrective plan designed to meet or exceed the minimum standards for submission to the department of health. The owner of such system shall within one year take any action required to bring the water into full compliance with the standards. The department of health may require compliance as promptly as necessary to abate an immediate public health threat or may extend the period of compliance if substantial new construction is required: PROVIDED FURTHER, That the extension shall be granted only upon a determination by the department, after a public hearing, that the extension will not pose an imminent threat to public health. Each such system shall include a notice identifying the water quality standards exceeded, and the amount by which the water tested exceeded the standards, in all customer bills mailed after such determination. The notification shall

continue until water quality tests conducted in accordance with this chapter establish that the system meets or exceeds the minimum standards. [1991 c 3 § 375; 1984 c 187 § 4.]

Chapter 70.146

WATER POLLUTION CONTROL FACILITIES FINANCING

Sections

70.146.030	Water quality account—Progress report.
70.146.070	Grants or loans for water pollution control facilities—Considerations.
70.146.080	Determination of tax receipts in water quality account—Transfer of sufficient moneys from general revenues.

70.146.030 Water quality account—Progress report. (1) The water quality account is hereby created in the state treasury. Moneys in the account may be used only in a manner consistent with this chapter. Moneys deposited in the account shall be administered by the department of ecology and shall be subject to legislative appropriation. Moneys placed in the account shall include tax receipts as provided in RCW 82.24.027, 82.26.025, and 82.32.390, principal and interest from the repayment of any loans granted pursuant to this chapter, and any other moneys appropriated to the account by the legislature.

(2) The department may use or permit the use of any moneys in the account to make grants or loans to public bodies, including grants to public bodies as cost-sharing moneys in any case where federal, local, or other funds are made available on a cost-sharing basis, for water pollution control facilities and activities, or for purposes of assisting a public body to obtain an ownership interest in water pollution control facilities and/or to defray a part of the payments made by a public body to a service provider under a service agreement entered into pursuant to RCW 70.150.060, within the purposes of this chapter and for related administrative expenses. No more than three percent of the moneys deposited in the account may be used by the department to pay for the administration of the grant and loan program authorized by this chapter.

(3) The department shall present a progress report each biennium on the use of moneys from the account to the chairs of the committees on ways and means of the senate and house of representatives, including one copy to the staff of each of the committees. [1991 1st sp.s. c 13 § 61. Prior: 1987 c 505 § 64; 1987 c 436 § 6; 1986 c 3 § 3.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.070 Grants or loans for water pollution control facilities—Considerations. When making grants or loans for water pollution control facilities, the department shall consider the following:

(1) The protection of water quality and public health;

(2) The cost to residential ratepayers if they had to finance water pollution control facilities without state assistance;

(3) Actions required under federal and state permits and compliance orders;

(4) The level of local fiscal effort by residential ratepayers since 1972 in financing water pollution control facilities;

(5) The extent to which the applicant county or city, or if the applicant is another public body, the extent to which the county or city in which the applicant public body is located, has established programs to mitigate nonpoint pollution of the surface or subterranean water sought to be protected by the water pollution control facility named in the application for state assistance; and

(6) The recommendations of the Puget Sound water quality authority and any other board, council, commission, or group established by the legislature or a state agency to study water pollution control issues in the state.

A county, city, or town that is required or chooses to plan under RCW 36.70A.040 may not receive a grant or loan for water pollution control facilities unless it has adopted a comprehensive plan in conformance with the requirements of chapter 36.70A RCW, after it is required that the comprehensive plan be adopted, or unless it has adopted development regulations in conformance with the requirements of chapter 36.70A RCW, after it is required that development regulations be adopted. [1991 1st sp.s. c 32 § 24; 1986 c 3 § 10.]

Section headings not law—1991 1st sp.s. c 32: See RCW 36.70A.902.

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.080 Determination of tax receipts in water quality account—Transfer of sufficient moneys from general revenues. Within thirty days after June 30, 1987, and within thirty days after each succeeding fiscal year thereafter, the state treasurer shall determine the tax receipts deposited into the water quality account for the preceding fiscal year. If the tax receipts deposited into the account in each of the fiscal years 1988 and 1989 are less than forty million dollars, the state treasurer shall transfer sufficient moneys from general state revenues into the water quality account to bring the total receipts in each fiscal year up to forty million dollars.

For the biennium ending June 30, 1991, if the tax receipts deposited into the water quality account and the earnings on investment of balances credited to the account are less than ninety million dollars, the treasurer shall transfer sufficient moneys from general state revenues into the water quality account to bring the total revenue up to ninety million dollars. The determination and transfer shall be made by July 31, 1991.

For fiscal year 1992 and thereafter, if the tax receipts deposited into the water quality account for each fiscal year are less than forty-five million dollars, the treasurer shall transfer sufficient moneys from general state revenues into the water quality account to bring the total revenue up to forty-five million dollars. Determinations

and transfers shall be made by July 31 for the preceding fiscal year. [1991 1st sp.s. c 16 § 923; 1986 c 3 § 11.]

Severability—Effective date—1991 1st sp.s. c 16: See notes following RCW 9.46.100.

Effective dates—1986 c 3: See note following RCW 82.24.027.

Chapter 70.148

UNDERGROUND PETROLEUM STORAGE TANKS

Sections

70.148.005	Finding—Intent.
70.148.010	Definitions.
70.148.020	Pollution liability insurance program trust account.
70.148.030	Pollution liability insurance program—Generally.
70.148.035	Program design—Cost coverage.
70.148.040	Rules.
70.148.050	Powers and duties of director.
70.148.060	Disclosure of reports and information—Penalty.
70.148.070	Insurer selection process and criteria.
70.148.080	Cancellation or refusal by insurer—Appeal.
70.148.090	Exemptions from Title 48 RCW—Exceptions.
70.148.100	Repealed.
70.148.120	Financial assistance for corrective actions in small communities—Intent.
70.148.130	Financial assistance—Criteria.
70.148.140	Financial assistance—Private owner or operator.
70.148.150	Financial assistance—Public owner or operator.
70.148.160	Financial assistance—Rural hospitals.
70.148.170	Certification.

70.148.005 Finding—Intent. (1) The legislature finds that:

(a) Final regulations adopted by the United States environmental protection agency (EPA) require owners and operators of underground petroleum storage tanks to demonstrate financial responsibility for accidental releases of petroleum as a precondition to continued ownership and operation of such tanks;

(b) Financial responsibility is demonstrated through the purchase of pollution liability insurance or an acceptable alternative such as coverage under a state financial responsibility program, in the amount of at least five hundred thousand dollars per occurrence and one million dollars annual aggregate depending upon the nature, use, and number of tanks owned or operated;

(c) Many owners and operators of underground petroleum storage tanks cannot purchase pollution liability insurance either because private insurance is unavailable at any price or because owners and operators cannot meet the rigid underwriting standards of existing insurers, nor can many owners and operators meet the strict regulatory standards imposed for alternatives to the purchase of insurance; and

(d) Without a state financial responsibility program for owners and operators of underground petroleum storage tanks, many tank owners and operators will be forced to discontinue the ownership and operation of these tanks.

(2) The purpose of this chapter is to create a state financial responsibility program meeting EPA standards for owners and operators of underground petroleum storage tanks in a manner that:

(a) Minimizes state involvement in pollution liability claims management and insurance administration;

(b) Protects the state of Washington from unwanted and unanticipated liability for accidental release claims;

(c) Creates incentives for private insurers to provide needed liability insurance; and

(d) Parallels generally accepted principles of insurance and risk management.

To that end, this chapter establishes a temporary program to provide pollution liability reinsurance at a price that will encourage a private insurance company or risk retention group to sell pollution liability insurance in accordance with the requirements of this chapter to owners and operators of underground petroleum storage tanks, thereby allowing the owners and operators to comply with the financial responsibility regulations of the EPA.

(3) It is not the intent of this chapter to permit owners and operators of underground petroleum storage tanks to obtain pollution liability insurance without regard to the quality or condition of their storage tanks or without regard to the risk management practices of tank owners and operators, nor is it the intent of this chapter to provide coverage or funding for past or existing petroleum releases. Further, it is the intent of the legislature that the program follow generally accepted insurance underwriting and actuarial principles and to deviate from those principles only to the extent necessary and within the tax revenue limits provided, to make pollution liability insurance reasonably affordable and available to owners and operators who meet the requirements of this chapter, particularly to those owners and operators whose underground storage tanks meet a vital economic need within the affected community. [1990 c 64 § 1; 1989 c 383 § 1.]

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

(1) "Accidental release" means any sudden or nonsudden release of petroleum arising from operating an underground storage tank that results in a need for corrective action, bodily injury, or property damage neither expected nor intended by the owner or operator.

(2) "Director" means the Washington pollution liability insurance program director.

(3) "Bodily injury" means bodily injury, sickness, or disease sustained by any person, including death at any time resulting from the injury, sickness, or disease.

(4) "Corrective action" means those actions reasonably required to be undertaken by the insured to remove, treat, neutralize, contain, or clean up an accidental release in order to comply with any statute, ordinance, rule, regulation, directive, order, or similar legal requirement of the United States, the state of Washington, or any political subdivision of the United States or the state of Washington in effect at the time of an accidental release. "Corrective action" includes, when agreed to in writing, in advance by the insurer, action to remove, treat, neutralize, contain, or clean up an accidental release to avert, reduce, or eliminate the liability of the insured for corrective action, bodily injury, or property

damage. "Corrective action" also includes actions reasonably necessary to monitor, assess, and evaluate an accidental release.

"Corrective action" does not include:

(a) Replacement or repair of storage tanks or other receptacles;

(b) Replacement or repair of piping, connections, and valves of storage tanks or other receptacles;

(c) Excavation or backfilling done in conjunction with (a) or (b) of this subsection; or

(d) Testing for a suspected accidental release if the results of the testing indicate that there has been no accidental release.

(5) "Defense costs" include the costs of legal representation, expert fees, and related costs and expenses incurred in defending against claims or actions brought by or on behalf of:

(a) The United States, the state of Washington, or any political subdivision of the United States or state of Washington to require corrective action or to recover costs of corrective action; or

(b) A third party for bodily injury or property damage caused by an accidental release.

(6) "Washington pollution liability insurance program" or "program" means the reinsurance program created by this chapter.

(7) "Insured" means the owner or operator who is provided insurance coverage in accordance with this chapter.

(8) "Insurer" means the insurance company or risk retention group licensed or qualified to do business in Washington and authorized by the director to provide insurance coverage in accordance with this chapter.

(9) "Loss reserve" means the amount traditionally set aside by commercial liability insurers for costs and expenses related to claims that have been made. "Loss reserve" does not include losses that have been incurred but not reported to the insurer.

(10) "Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a release from an underground storage tank.

(11) "Operator" means a person in control of, or having responsibility for, the daily operation of an underground storage tank.

(12) "Owner" means a person who owns an underground storage tank.

(13) "Person" means an individual, trust, firm, joint stock company, corporation (including government corporation), partnership, association, consortium, joint venture, commercial entity, state, municipality, commission, political subdivision of a state, interstate body, the federal government, or any department or agency of the federal government.

(14) "Petroleum" means crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure, which means at sixty degrees Fahrenheit and 14.7 pounds per square inch absolute and includes gasoline, kerosene, heating oils, and diesel fuels.

(15) "Property damage" means:

(a) Physical injury to, destruction of, or contamination of tangible property, including the loss of use of the

property resulting from the injury, destruction, or contamination; or

(b) Loss of use of tangible property that has not been physically injured, destroyed, or contaminated but has been evacuated, withdrawn from use, or rendered inaccessible because of an accidental release.

(16) "Release" means the emission, discharge, disposal, dispersal, seepage, or escape of petroleum from an underground storage tank into or upon land, ground water, surface water, subsurface soils, or the atmosphere.

(17) "Surplus reserve" means the amount traditionally set aside by commercial property and casualty insurance companies to provide financial protection from unexpected losses and to serve, in part, as a measure of an insurance company's net worth.

(18) "Tank" means a stationary device, designed to contain an accumulation of petroleum, that is constructed primarily of nonearthen materials such as wood, concrete, steel, or plastic that provides structural support.

(19) "Underground storage tank" means any one or a combination of tanks including underground pipes connected to the tank, that is used to contain an accumulation of petroleum and the volume of which (including the volume of the underground pipes connected to the tank) is ten percent or more beneath the surface of the ground. [1990 c 64 § 2; 1989 c 383 § 2.]

70.148.020 Pollution liability insurance program trust account. (1) The pollution liability insurance program trust account is established in the custody of the state treasurer. All funds appropriated for this chapter and all premiums collected for reinsurance shall be deposited in the account. Expenditures from the account shall be used exclusively for the purposes of this chapter including payment of costs of administering the pollution liability insurance and underground storage tank community assistance programs. The account is subject to allotment procedures under chapter 43.88 RCW. Expenditures for payment of the costs of administering the program may be made only after appropriation by statute. No appropriation is required for other expenditures from the account.

(2) Each calendar quarter, the director shall report to the insurance commissioner and the chairs of the senate ways and means, senate financial institutions, house of representatives revenue, and house of representatives financial institutions committees, the loss and surplus reserves required for the calendar quarter. The director shall notify the department of revenue of this amount by the fifteenth day of each calendar quarter.

(3) Each calendar quarter the director shall report to the chairs of the senate ways and means, senate financial institutions, house of representatives revenue, and house of representatives financial institutions and insurance committees, the amount of reserves necessary to fund commitments made to provide financial assistance under RCW 70.148.130 to the extent that the financial assistance reserves do not jeopardize the operations and liabilities of the pollution liability insurance program. The director shall notify the department of revenue of this

amount by the fifteenth day of each calendar quarter. The director may immediately establish an initial financial assistance reserve of five million dollars from available revenues. The director may not expend more than fifteen million dollars for the financial assistance program. [1991 1st sp.s. c 13 § 90; 1991 c 4 § 7; 1990 c 64 § 3; 1989 c 383 § 3.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Severability—1991 c 4: See note following RCW 70.148.120.

70.148.030 Pollution liability insurance program—Generally. (1) The Washington pollution liability insurance program is created as an independent agency of the state. The administrative head and appointing authority of the program shall be the director who shall be appointed by the governor, with the consent of the senate, and shall serve at the pleasure of the governor. The salary for this office shall be set by the governor pursuant to RCW 43.03.040. The director shall appoint a deputy director. The director, deputy director, and up to three other employees are exempt from the civil service law, chapter 41.06 RCW.

(2) The director shall employ such other staff as are necessary to fulfill the responsibilities and duties of the director. The staff is subject to the civil service law, chapter 41.06 RCW. In addition, the director 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. To the extent necessary to protect the state from unintended liability and ensure quality program and contract design, the director shall contract with an organization or organizations with demonstrated experience and ability in managing and designing pollution liability insurance and with an organization or organizations with demonstrated experience and ability in managing and designing pollution liability reinsurance. The director shall enter into such contracts after competitive bid but need not select the lowest bid. Any such contractor or consultant is prohibited from releasing, publishing, or otherwise using any information made available to it under its contractual responsibility without specific permission of the program director. The director may call upon other agencies of the state to provide technical support and available information as necessary to assist the director in meeting the director's responsibilities under this chapter. Agencies shall supply this support and information as promptly as circumstances permit.

(3) The governor shall appoint a standing technical advisory committee that is representative of the public, the petroleum marketing industry, business and local government owners of underground storage tanks, and insurance professionals. Individuals appointed to the technical advisory committee shall serve at the pleasure of the governor and without compensation for their services as members, but may be reimbursed for their travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(4) A member of the technical advisory committee of the program is not civilly liable for any act or omission in the course and scope of his or her official capacity unless the act or omission constitutes gross negligence. [1990 c 64 § 4; 1989 c 383 § 4.]

70.148.035 Program design—Cost coverage. The director may design the program to cover the costs incurred in determining whether a proposed applicant for pollution insurance under the program meets the underwriting standards of the insurer. In covering such costs the director shall consider the financial resources of the applicant, shall take into consideration the economic impact of the discontinued use of the applicant's storage tank upon the affected community, shall provide coverage within the revenue limits provided under this chapter, and shall limit coverage of such costs to the extent that coverage would be detrimental to providing affordable insurance under the program. [1990 c 64 § 11.]

70.148.040 Rules. The director may adopt rules consistent with this chapter to carry out the purposes of this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. [1990 c 64 § 5; 1989 c 383 § 5.]

70.148.050 Powers and duties of director. The director has the following powers and duties:

(1) To design and from time to time revise a reinsurance contract providing coverage to an insurer meeting the requirements of this chapter. Before initially entering into a reinsurance contract, the director shall provide a report to the chairs of the senate ways and means, senate financial institutions, house of representatives revenue, and house of representatives financial institutions committees and shall include an actuarial report describing the various reinsurance methods considered by the director and describing each method's costs. In designing the reinsurance contract the director shall consider common insurance industry reinsurance contract provisions and shall design the contract in accordance with the following guidelines:

(a) The contract shall provide coverage to the insurer for the liability risks of owners and operators of underground storage tanks for third party bodily injury and property damage and corrective action that are underwritten by the insurer.

(b) In the event of an insolvency of the insurer, the reinsurance contract shall provide reinsurance payable directly to the insurer or to its liquidator, receiver, or successor on the basis of the liability of the insurer in accordance with the reinsurance contract. In no event may the program be liable for or provide coverage for that portion of any covered loss that is the responsibility of the insurer whether or not the insurer is able to fulfill the responsibility.

(c) The total limit of liability for reinsurance coverage shall not exceed one million dollars per occurrence and two million dollars annual aggregate for each policy underwritten by the insurer less the ultimate net loss retained by the insurer as defined and provided for in the reinsurance contract.

(d) Disputes between the insurer and the insurance program shall be settled through arbitration.

(2) To design and implement a structure of periodic premiums due the director from the insurer that takes full advantage of revenue collections and projected revenue collections to ensure affordable premiums to the insured consistent with sound actuarial principles.

(3) To periodically review premium rates for reinsurance to determine whether revenue appropriations supporting the program can be reduced without substantially increasing the insured's premium costs.

(4) To solicit bids from insurers and select an insurer to provide pollution liability insurance to owners and operators of underground storage tanks for third party bodily injury and property damage and corrective action.

(5) To monitor the activities of the insurer to ensure compliance with this chapter and protect the program from excessive loss exposure resulting from claims mismanagement by the insurer.

(6) To monitor the success of the program and periodically make such reports and recommendations to the legislature as the director deems appropriate.

(7) To annually report the financial and loss experience of the insurer as to policies issued under the program and the financial and loss experience of the program to the legislature.

(8) To evaluate the effects of the program upon the private market for liability insurance for owners and operators of underground storage tanks and make recommendations to the legislature on the necessity for continuing the program to ensure availability of such coverage.

(9) To enter into contracts with public and private agencies to assist the director in his or her duties to design, revise, monitor, and evaluate the program and to provide technical or professional assistance to the director.

(10) To examine the affairs, transactions, accounts, records, documents, and assets of insurers as the director deems advisable. [1990 c 64 § 6; 1989 c 383 § 6.]

70.148.060 Disclosure of reports and information—Penalty. (1) All examination and proprietary reports and information obtained by the director and the director's staff in soliciting bids from insurers and in monitoring the insurer selected by the director shall not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) Subsection (1) of this section notwithstanding, the director may furnish all or part of examination reports prepared by the director or by any person, firm, corporation, association, or other entity preparing the reports on behalf of the director to:

(a) The Washington state insurance commissioner;

(b) A person or organization officially connected with the insurer as officer, director, attorney, auditor, or independent attorney or independent auditor; and

(c) The attorney general in his or her role as legal advisor to the director.

(3) Subsection (1) of this section notwithstanding, the director may furnish all or part of the examination or proprietary reports or information obtained by the director to:

(a) The Washington state insurance commissioner; and

(b) A person, firm, corporation, association, governmental body, or other entity with whom the director has contracted for services necessary to perform his or her official duties.

(4) Examination reports and proprietary information obtained by the director and the director's staff are not subject to public disclosure under chapter 42.17 RCW.

(5) A person who violates any provision of this section is guilty of a gross misdemeanor. [1990 c 64 § 7; 1989 c 383 § 7.]

70.148.070 Insurer selection process and criteria. (1) In selecting an insurer to provide pollution liability insurance coverage to owners and operators of underground storage tanks, the director shall evaluate bids based upon criteria established by the director that shall include:

(a) The insurer's ability to underwrite pollution liability insurance;

(b) The insurer's ability to settle pollution liability claims quickly and efficiently;

(c) The insurer's estimate of underwriting and claims adjustment expenses;

(d) The insurer's estimate of premium rates for providing coverage;

(e) The insurer's ability to manage and invest premiums; and

(f) The insurer's ability to provide risk management guidance to insureds.

The director shall select the bidder most qualified to provide insurance consistent with this chapter and need not select the bidder submitting the least expensive bid. The director may consider bids by groups of insurers and management companies who propose to act in concert in providing coverage and who otherwise meet the requirements of this chapter.

(2) The successful bidder shall agree to provide liability insurance coverage to owners and operators of underground storage tanks for third party bodily injury and property damage and corrective action consistent with the following minimum standards:

(a) The insurer shall provide coverage for defense costs.

(b) The insurer shall collect a deductible from the insured for corrective action in an amount approved by the director.

(c) The insurer shall provide coverage for accidental releases in the amount of five hundred thousand dollars per occurrence and one million dollars annual aggregate but no more than one million dollars per occurrence and two million dollars annual aggregate exclusive of defense costs.

(d) The insurer shall require insurance applicants to meet at least the following underwriting standards before issuing coverage to the applicant:

(i) The applicant must be in compliance with statutes, ordinances, rules, regulations, and orders governing the ownership and operation of underground storage tanks as identified by the director by rule; and

(ii) The applicant must exercise adequate underground storage tank risk management as specified by the director by rule.

(e) The insurer may exclude coverage for losses arising before the effective date of coverage, and the director may adopt rules establishing standards for determining whether a loss was incurred before the effective date of coverage.

(f) The insurer may exclude coverage for bodily injury, property damage, and corrective action as permitted by the director by rule.

(g) The insurer shall use a variable rate schedule approved by the director taking into account tank type, tank age, and other factors specified by the director.

(3) The director shall adopt all rules necessary to implement this section. In developing and adopting rules governing rates, deductibles, underwriting standards, and coverage conditions, limitations, and exclusions, the director shall balance the owner and operator's need for coverage with the need to maintain the actuarial integrity of the program, shall take into consideration the economic impact of the discontinued use of a storage tank upon the affected community, and shall consult with the standing technical advisory committee established under RCW 70.148.030(3). In developing and adopting rules governing coverage exclusions affecting corrective action, the director shall consult with the Washington state department of ecology.

(4) Notwithstanding the definitions contained in RCW 70.148.010, the director may permit an insurer to use different words or phrases describing the coverage provided under the program. In permitting such deviations from the definitions contained in RCW 70.148.010, the director shall consider the regulations adopted by the United States environmental protection agency requiring financial responsibility by owners and operators of underground petroleum storage tanks.

(5) Owners and operators of underground storage tanks or sites containing underground storage tanks where a preexisting release has been identified or where the owner or operator knows of a preexisting release are eligible for coverage under the program subject to the following conditions:

(a) The owner or operator must have a plan for proceeding with corrective action; and

(b) If the owner or operator files a claim with the insurer, the owner or operator has the burden of proving that the claim is not related to a preexisting release until the owner or operator demonstrates to the satisfaction of the director that corrective action has been completed.

(6) When a reinsurance contract has been entered into by the agency and insurance companies, the director shall notify the department of ecology of the letting of the contract. Within thirty days of that notification, the department of ecology shall notify all known owners and operators of petroleum underground storage tanks that

appropriate levels of financial responsibility must be established by October 26, 1990, in accordance with federal environmental protection agency requirements, and that insurance under the program is available. All owners and operators of petroleum underground storage tanks must also be notified that declaration of method of financial responsibility or intent to seek to be insured under the program must be made to the state by November 1, 1990. If the declaration of method of financial responsibility is not made by November 1, 1990, the department of ecology shall, pursuant to chapter 90.76 RCW, prohibit the owner or operator of an underground storage tank from obtaining a tank tag or receiving petroleum products until such time as financial responsibility has been established. [1990 c 64 § 8; 1989 c 383 § 8.]

70.148.080 Cancellation or refusal by insurer—Appeal. If the insurer cancels or refuses to issue or renew a policy, the affected owner or operator may appeal the insurer's decision to the director. The director shall conduct a brief adjudicative proceeding under chapter 34.05 RCW. [1990 c 64 § 9; 1989 c 383 § 9.]

70.148.090 Exemptions from Title 48 RCW—Exceptions. (1) The activities and operations of the program are exempt from the provisions and requirements of Title 48 RCW and to the extent of their participation in the program, the activities and operations of the insurer selected by the director to provide liability insurance coverage to owners and operators of underground storage tanks are exempt from the requirements of Title 48 RCW except for:

- (a) Chapter 48.03 RCW pertaining to examinations;
- (b) RCW 48.05.250 pertaining to annual reports;
- (c) Chapter 48.12 RCW pertaining to assets and liabilities;
- (d) Chapter 48.13 RCW pertaining to investments;
- (e) Chapter 48.30 RCW pertaining to deceptive, false, or fraudulent acts or practices; and
- (f) Chapter 48.92 RCW pertaining to liability risk retention.

(2) To the extent of their participation in the program, the insurer selected by the director to provide liability insurance coverage to owners and operators of underground storage tanks shall not participate in the Washington insurance guaranty association nor shall the association be liable for coverage provided to owners and operators of underground storage tanks issued in connection with the program. [1990 c 64 § 10; 1989 c 383 § 10.]

70.148.100 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

70.148.120 Financial assistance for corrective actions in small communities—Intent. The legislature recognizes as a fundamental government purpose the need to protect the environment and human health and safety. To that end the state has enacted laws designed to limit

and prevent environmental damage and risk to public health and safety caused by underground petroleum storage tank leaks. Because of the costs associated with compliance with such laws and the high costs associated with correcting past environmental damage, many owners and operators of underground petroleum storage tanks have discontinued the use of or have planned to discontinue the use of such tanks. As a consequence, isolated communities face the loss of their source of motor vehicle fuel and face the risk that the owner or operator will have insufficient funds to take corrective action for pollution caused by past leaks from the tanks. In particular, rural communities face the risk that essential emergency, medical, fire and police services may be disrupted through the diminution or elimination of local sellers of petroleum products and by the closure of underground storage tanks owned by local government entities serving these communities.

The legislature also recognizes as a fundamental government purpose the need to preserve a minimum level of economic viability in rural communities so that public revenues generated from economic activity are sufficient to sustain necessary governmental functions. The closing of local service stations adversely affects local economies by reducing or eliminating reasonable access to fuel for agricultural, commercial, and transportation needs.

The legislature intends to assist small communities within this state by authorizing:

(1) Cities, towns, and counties to certify that a local private owner or operator of an underground petroleum storage tank meets a vital local government, public health or safety need thereby qualifying the owner or operator for state financial assistance in complying with environmental regulations and assistance in taking needed corrective action for existing tank leaks; and

(2) Local government entities to obtain state financial assistance to bring local government underground petroleum storage tanks into compliance with environmental regulations and to take needed corrective action for existing tank leaks. [1991 c 4 § 1.]

Severability—1991 c 4: "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." [1991 c 4 § 10.]

70.148.130 Financial assistance—Criteria. (1) Subject to the conditions and limitations of RCW 70.148.120 through 70.148.170, the director shall establish and manage a program for providing financial assistance to public and private owners and operators of underground storage tanks who have been certified by the governing body of the county, city, or town in which the tanks are located as meeting a vital local government, public health or safety need. In providing such financial assistance the director shall:

(a) Require owners and operators, including local government owners and operators, to demonstrate serious financial hardship;

(b) Limit assistance to only that amount necessary to supplement applicant financial resources;

(c) Limit assistance to no more than one hundred fifty thousand dollars in value for any one underground storage tank site of which amount no more than seventy-five thousand dollars in value may be provided for corrective action; and

(d) Whenever practicable, provide assistance through the direct payment of contractors and other professionals for labor, materials, and other services.

(2) Except as otherwise provided in RCW 70.148.120 through 70.148.170, no grant of financial assistance may be used for any purpose other than for corrective action and repair, replacement, reconstruction, and improvement of underground storage tanks and tank sites. If at any time prior to providing financial assistance or in the course of providing such assistance, it appears to the director that corrective action costs may exceed seventy-five thousand dollars, the director may not provide further financial assistance until the owner or operator has developed and implemented a corrective action plan with the department of ecology.

(3) When requests for financial assistance exceed available funds, the director shall give preference to providing assistance first to those underground storage tank sites which constitute the sole source of petroleum products in remote rural communities.

(4) The director shall consult with the department of ecology in approving financial assistance for corrective action to ensure compliance with regulations governing underground petroleum storage tanks and corrective action.

(5) The director shall approve or disapprove applications for financial assistance within sixty days of receipt of a completed application meeting the requirements of RCW 70.148.120 through 70.148.170. The certification by local government of an owner or operator shall not preclude the director from disapproving an application for financial assistance if the director finds that such assistance would not meet the purposes of RCW 70.148.120 through 70.148.170.

(6) The director may adopt all rules necessary to implement the financial assistance program and shall consult with the technical advisory committee established under RCW 70.148.030 in developing such rules and in reviewing applications for financial assistance. [1991 c 4 § 2.]

Severability—1991 c 4: See note following RCW 70.148.120.

70.148.140 Financial assistance—Private owner or operator. (1) To qualify for financial assistance, a private owner or operator retailing petroleum products to the public must:

(a) First apply for insurance from the pollution liability insurance program and request financial assistance in a form and manner required by the director;

(b) If the director makes a preliminary determination of possible eligibility for financial assistance, apply to the appropriate governing body of the city or town in which the tanks are located or in the case where the tanks are located outside of the jurisdiction of a city or town, then to the appropriate governing body of the

county in which the tanks are located, for a determination by the governing body of the city, town, or county that the continued operation of the tanks meets a vital local government, or public health or safety need; and

(c) Qualify for insurance coverage from the pollution liability insurance program if such financial assistance were to be provided.

(2) In consideration for financial assistance and prior to receiving such assistance the owner and operator must enter into an agreement with the state whereby the owner and operator agree:

(a) To sell petroleum products to the public;

(b) To maintain the tank site for use in the retail sale of petroleum products for a period of not less than fifteen years from the date of agreement;

(c) To sell petroleum products to local government entities within the affected community on a cost-plus basis periodically negotiated between the owner and operator and the city, town, or county in which the tanks are located; and

(d) To maintain compliance with state underground storage tank financial responsibility and environmental regulations.

(3) The agreement shall be filed as a real property lien against the tank site with the county auditor [of the county] in which the tanks are located. If the owner or operator transfers his or her interest in such property, the new owner or operator must agree to abide by the agreement or any financial assistance provided under RCW 70.148.120 through 70.148.170 shall be immediately repaid to the state by the owner or operator who received such assistance.

(4) As determined by the director, if an owner or operator materially breaches the agreement, any financial assistance provided shall be immediately repaid by such owner or operator.

(5) The agreement between an owner and operator and the state required under this section shall expire fifteen years from the date of entering into the agreement. [1991 c 4 § 3.]

Severability—1991 c 4: See note following RCW 70.148.120.

70.148.150 Financial assistance—Public owner or operator. (1) To qualify for financial assistance, a public owner or operator must:

(a) First apply for insurance from the pollution liability insurance program and request financial assistance in a form and manner required by the director;

(b) Provide to the director a copy of the resolution by the governing body of the city, town, or county having jurisdiction, finding that the continued operation of the tanks is necessary to maintain vital local public health, education, or safety needs;

(c) Qualify for insurance coverage from the pollution liability insurance program if such financial assistance were to be provided.

(2) The director shall give priority to and shall encourage local government entities to consolidate multiple operational underground storage tank sites into as few sites as possible. For this purpose, the director may provide financial assistance for the establishment of a new

local government underground storage tank site contingent upon the closure of other operational sites in accordance with environmental regulations. Within the per site financial limits imposed under RCW 70.148.120 through 70.148.170, the director may authorize financial assistance for the closure of operational sites when closure is for the purpose of consolidation. [1991 c 4 § 4.]

Severability—1991 c 4: See note following RCW 70.148.120.

70.148.160 Financial assistance—Rural hospitals. To qualify for financial assistance, a rural hospital as defined in RCW 18.89.020, owning or operating an underground storage tank must:

(1) First apply for insurance from the pollution liability insurance program and request financial assistance in a form and manner required by the director;

(2) Apply to the governing body of the city, town, or county in which the hospital is located for certification that the continued operation of the tank or tanks is necessary to maintain vital local public health or safety needs;

(3) Qualify for insurance coverage from the pollution liability insurance program if such financial assistance were to be provided; and

(4) Agree to provide charity care as defined in RCW 70.39.020 in an amount of equivalent value to the financial assistance provided under RCW 70.148.120 through 70.148.170. The director shall consult with the department of health to monitor and determine the time period over which such care should be expected to be provided in the local community. [1991 c 4 § 5.]

Severability—1991 c 4: See note following RCW 70.148.120.

70.148.170 Certification. (1) The director shall develop and distribute to appropriate cities, towns, and counties a form for use by the local government in making the certification required for all private owner and operator financial assistance along with instructions on the use of such form.

(2) In certifying a private owner or operator retailing petroleum products to the public as meeting vital local government, public health or safety needs, the local government shall:

(a) Consider and find that other retail suppliers of petroleum products are located remote from the local community;

(b) Consider and find that the owner or operator requesting certification is capable of faithfully fulfilling the agreement required for financial assistance;

(c) Designate the local government official who will be responsible for negotiating the price of petroleum products to be sold on a cost-plus basis to the local government entities in the affected communities and the entities eligible to receive petroleum products at such price; and

(d) State the vital need or needs that the owner or operator meets.

(3) In certifying a hospital as meeting local public health and safety needs the local government shall:

(a) Consider and find that the continued use of the underground storage tank by the hospital is necessary; and

(b) Consider and find that the hospital provides health care services to the poor and otherwise provides charity care.

(4) The director shall notify the governing body of the city, town, or county providing certification when financial assistance for a private owner or operator has been approved. [1991 c 4 § 6.]

Severability—1991 c 4: See note following RCW 70.148.120.

Chapter 70.164

LOW-INCOME RESIDENTIAL WEATHERIZATION PROGRAM

Sections

70.164.030 Low-income weatherization assistance account.

70.164.030 Low-income weatherization assistance account. The low-income weatherization assistance account is created in the state treasury. All moneys from the money distributed to the state pursuant to Exxon v. United States, 561 F.Supp. 816 (1983), affirmed 773 F.2d 1240 (1985), or any other oil overcharge settlements or judgments distributed by the federal government, that are allocated to the low-income weatherization assistance account shall be deposited in the account. The department may accept such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, and shall deposit such funds in the account. Any moneys received from sponsor match payments shall be deposited in the account. The legislature may also appropriate moneys to the account. Moneys in the account shall be spent pursuant to appropriation and only for the purposes and in the manner provided in RCW 70.164.040. Any moneys appropriated that are not spent by the department shall return to the account. [1991 1st sp.s. c 13 § 62; 1987 c 36 § 3.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Chapter 70.168

STATE-WIDE TRAUMA CARE SYSTEM

Sections

70.168.010 Legislative finding.
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70.168.100 Regional emergency medical services and trauma care councils.
 70.168.110 Planning and service regions.
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 70.168.130 Disbursement of funds to regional emergency medical services and trauma care councils—Grants to non-profit agencies—Purposes.
 70.168.140 Prehospital provider liability.
 70.168.900 Chapter name.
 70.168.901 Severability—1990 c 269.

70.168.010 Legislative finding. The legislature finds and declares that:

(1) Trauma is a severe health problem in the state of Washington and a major cause of death;

(2) Presently, trauma care is very limited in many parts of the state, and health care in rural areas is in transition with the danger that some communities will be without emergency medical care;

(3) It is in the best interest of the citizens of Washington state to establish an efficient and well-coordinated state-wide emergency medical services and trauma care system to reduce costs and incidence of inappropriate and inadequate trauma care and emergency medical service and minimize the human suffering and costs associated with preventable mortality and morbidity;

(4) The goals and objectives of an emergency medical services and trauma care system are to: (a) Pursue trauma prevention activities to decrease the incidence of trauma; (b) provide optimal care for the trauma victim; (c) prevent unnecessary death and disability from trauma and emergency illness; and (d) contain costs of trauma care and trauma system implementation; and

(5) In other parts of the United States where trauma care systems have failed and trauma care centers have closed, there is a direct relationship between such failures and closures and a lack of commitment to fair and equitable reimbursement for trauma care participating providers and system overhead costs. [1990 c 269 § 1; 1988 c 183 § 1.]

70.168.015 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Communications system" means a radio and landline network which provides rapid public access, coordinated central dispatching of services, and coordination of personnel, equipment, and facilities in an emergency medical services and trauma care system.

(2) "Emergency medical service" means medical treatment and care that may be rendered at the scene of any medical emergency or while transporting any patient in an ambulance to an appropriate medical facility, including ambulance transportation between medical facilities.

(3) "Emergency medical services medical program director" means a person who is an approved program director as defined by RCW 18.71.205(4).

(4) "Department" means the department of health.

(5) "Designation" means a formal determination by the department that hospitals or health care facilities are

capable of providing designated trauma care services as authorized in RCW 70.168.070.

(6) "Designated trauma care service" means a level I, II, III, IV, or V trauma care service or level I, II, or III pediatric trauma care service or level I, I–pediatric, II, or III trauma–related rehabilitative service.

(7) "Emergency medical services and trauma care system plan" means a state–wide plan that identifies state–wide emergency medical services and trauma care objectives and priorities and identifies equipment, facility, personnel, training, and other needs required to create and maintain a state–wide emergency medical services and trauma care system. The plan also includes a plan of implementation that identifies the state, regional, and local activities that will create, operate, maintain, and enhance the system. The plan is formulated by incorporating the regional emergency medical services and trauma care plans required under this chapter. The plan shall be updated every two years and shall be made available to the state board of health in sufficient time to be considered in preparation of the biennial state health report required in RCW 43.20.050.

(8) "Emergency medical services and trauma care planning and service regions" means geographic areas established by the department under this chapter.

(9) "Facility patient care protocols" means the written procedures adopted by the medical staff that direct the care of the patient. These procedures shall be based upon the assessment of the patients' medical needs. The procedures shall follow minimum state–wide standards for trauma care services.

(10) "Hospital" means a facility licensed under chapter 70.41 RCW, or comparable health care facility operated by the federal government or located and licensed in another state.

(11) "Level I pediatric trauma care services" means pediatric trauma care services as established in RCW 70.168.060. Hospitals providing level I services shall provide definitive, comprehensive, specialized care for pediatric trauma patients and shall also provide ongoing research and health care professional education in pediatric trauma care.

(12) "Level II pediatric trauma care services" means pediatric trauma care services as established in RCW 70.168.060. Hospitals providing level II services shall provide initial stabilization and evaluation of pediatric trauma patients and provide comprehensive general medicine and surgical care to pediatric patients who can be maintained in a stable or improving condition without the specialized care available in the level I hospital. Complex surgeries and research and health care professional education in pediatric trauma care activities are not required.

(13) "Level III pediatric trauma care services" means pediatric trauma care services as established in RCW 70.168.060. Hospitals providing level III services shall provide initial evaluation and stabilization of patients. The range of pediatric trauma care services provided in level III hospitals are not as comprehensive as level I and II hospitals.

(14) "Level I rehabilitative services" means rehabilitative services as established in RCW 70.168.060. Facilities providing level I rehabilitative services provide rehabilitative treatment to patients with traumatic brain injuries, spinal cord injuries, complicated amputations, and other diagnoses resulting in functional impairment, with moderate to severe impairment or complexity. These facilities serve as referral facilities for facilities authorized to provide level II and III rehabilitative services.

(15) "Level I–pediatric rehabilitative services" means rehabilitative services as established in RCW 70.168.060. Facilities providing level I–pediatric rehabilitative services provide the same services as facilities authorized to provide level I rehabilitative services except these services are exclusively for children under the age of fifteen years.

(16) "Level II rehabilitative services" means rehabilitative services as established in RCW 70.168.060. Facilities providing level II rehabilitative services treat individuals with musculoskeletal trauma, peripheral nerve lesions, lower extremity amputations, and other diagnoses resulting in functional impairment in more than one functional area, with moderate to severe impairment or complexity.

(17) "Level III rehabilitative services" means rehabilitative services as established in RCW 70.168.060. Facilities providing level III rehabilitative services provide treatment to individuals with musculoskeletal injuries, peripheral nerve injuries, uncomplicated lower extremity amputations, and other diagnoses resulting in functional impairment in more than one functional area but with minimal to moderate impairment or complexity.

(18) "Level I trauma care services" means trauma care services as established in RCW 70.168.060. Hospitals providing level I services shall have specialized trauma care teams and provide ongoing research and health care professional education in trauma care.

(19) "Level II trauma care services" means trauma care services as established in RCW 70.168.060. Hospitals providing level II services shall be similar to those provided by level I hospitals, although complex surgeries and research and health care professional education activities are not required to be provided.

(20) "Level III trauma care services" means trauma care services as established in RCW 70.168.060. The range of trauma care services provided by level III hospitals are not as comprehensive as level I and II hospitals.

(21) "Level IV trauma care services" means trauma care services as established in RCW 70.168.060.

(22) "Level V trauma care services" means trauma care services as established in RCW 70.168.060. Facilities providing level V services shall provide stabilization and transfer of all patients with potentially life–threatening injuries.

(23) "Patient care procedures" means written operating guidelines adopted by the regional emergency medical services and trauma care council, in consultation with local emergency medical services and trauma care councils, emergency communication centers, and the

emergency medical services medical program director, in accordance with minimum state-wide standards. The patient care procedures shall identify the level of medical care personnel to be dispatched to an emergency scene, procedures for triage of patients, the level of trauma care facility to first receive the patient, and the name and location of other trauma care facilities to receive the patient should an interfacility transfer be necessary. Procedures on interfacility transfer of patients shall be consistent with the transfer procedures required in chapter 70.170 RCW.

(24) "Pediatric trauma patient" means trauma patients known or estimated to be less than fifteen years of age.

(25) "Prehospital" means emergency medical care or transportation rendered to patients prior to hospital admission or during interfacility transfer by licensed ambulance or aid service under chapter 18.73 RCW, by personnel certified to provide emergency medical care under chapters 18.71 and 18.73 RCW, or by facilities providing level V trauma care services as provided for in this chapter.

(26) "Prehospital patient care protocols" means the written procedures adopted by the emergency medical services medical program director that direct the out-of-hospital emergency care of the emergency patient which includes the trauma patient. These procedures shall be based upon the assessment of the patients' medical needs and the treatment to be provided for serious conditions. The procedures shall meet or exceed state-wide minimum standards for trauma and other prehospital care services.

(27) "Rehabilitative services" means a formal program of multidisciplinary, coordinated, and integrated services for evaluation, treatment, education, and training to help individuals with disabling impairments achieve and maintain optimal functional independence in physical, psychosocial, social, vocational, and avocational realms. Rehabilitation is indicated for the trauma patient who has sustained neurologic or musculoskeletal injury and who needs physical or cognitive intervention to return to home, work, or society.

(28) "Secretary" means the secretary of the department of health.

(29) "Trauma" means a major single or multisystem injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability.

(30) "Trauma care system" means an organized approach to providing care to trauma patients that provides personnel, facilities, and equipment for effective and coordinated trauma care. The trauma care system shall: Identify facilities with specific capabilities to provide care, triage trauma victims at the scene, and require that all trauma victims be sent to an appropriate trauma facility. The trauma care system includes prevention, prehospital care, hospital care, and rehabilitation.

(31) "Triage" means the sorting of patients in terms of disposition, destination, or priority. Triage of prehospital trauma victims requires identifying injury severity

so that the appropriate care level can be readily assessed according to patient care guidelines.

(32) "Verification" means the identification of prehospital providers who are capable of providing verified trauma care services and shall be a part of the licensure process required in chapter 18.73 RCW.

(33) "Verified trauma care service" means prehospital service as provided for in RCW 70.168.080, and identified in the regional emergency medical services and trauma care plan as required by RCW 70.168.100. [1990 c 269 § 4.]

70.168.020 Steering committee—Composition—

Appointment. (1) There is hereby created an emergency medical services and trauma care steering committee composed of representatives of individuals knowledgeable in emergency medical services and trauma care, including emergency medical providers such as physicians, nurses, hospital personnel, emergency medical technicians, paramedics, ambulance operators, a member of the emergency medical services licensing and certification advisory committee, local government officials, state officials, consumers, and persons affiliated professionally with health science schools. The governor shall appoint members of the steering committee. Members shall be appointed for a period of three years. The department shall provide administrative support to the committee. All appointive members of the committee, in the performance of their duties, may be entitled to receive travel expenses as provided in RCW 43.03.050 and 43.03.060. The governor may remove members from the committee who have three unexcused absences from committee meetings. The governor shall fill any vacancies of the committee in a timely manner. The terms of those members representing the same field shall not expire at the same time.

The committee shall elect a chair and a vice-chair whose terms of office shall be for one year each. The chair shall be ineligible for reelection after serving four consecutive terms.

The committee shall meet on call by the governor, the secretary, or the chair.

(2) The emergency medical services and trauma care steering committee shall:

(a) Advise the department regarding emergency medical services and trauma care needs throughout the state.

(b) Review the regional emergency medical services and trauma care plans and recommend changes to the department before the department adopts the plans.

(c) Review proposed departmental rules for emergency medical services and trauma care.

(d) Recommend modifications in rules regarding emergency medical services and trauma care. [1990 c 269 § 5; 1988 c 183 § 2.]

70.168.040 Emergency medical services and trauma care system trust account—Creation—Appropriations.

The emergency medical services and trauma care system trust account is hereby created in the state treasury. Moneys shall be transferred to the emergency medical services and trauma care system trust account

from the public safety education account or other sources as appropriated. Disbursements shall be made by the department subject to legislative appropriation. [1990 c 269 § 17; 1988 c 183 § 4.]

70.168.050 Emergency medical services and trauma care system—Department to establish—Rulemaking—Gifts. (1) The department, in consultation with, and having solicited the advice of, the emergency medical services and trauma care steering committee, shall establish the Washington state emergency medical services and trauma care system.

(2) The department shall adopt rules consistent with this chapter to carry out the purpose of this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. All rules and procedures adopted by the department shall minimize paperwork and compliance requirements for facilities and other participants. The department shall assure an opportunity for consultation, review, and comment by the public and providers of emergency medical services and trauma care before adoption of rules. When developing rules to implement this chapter the department shall consider the report of the Washington state trauma project established under chapter 183, Laws of 1988. Nothing in this chapter requires the department to follow any specific recommendation in that report except as it may also be included in this chapter.

(3) The department may apply for, receive, and accept 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 any activities related to the design, maintenance, or enhancements of the emergency medical services and trauma care system in the state. The department shall make available upon request to the appropriate legislative committees information concerning the source, amount, and use of such gifts or payments. [1990 c 269 § 3.]

70.168.060 Department duties—Timelines. The department, in consultation with and having solicited the advice of the emergency medical services and trauma care steering committee, shall:

(1) Establish the following on a state-wide basis:

(a) By September 1990, minimum standards for facility, equipment, and personnel for level I, II, III, IV, and V trauma care services;

(b) By September 1990, minimum standards for facility, equipment, and personnel for level I, I-pediatric, II, and III trauma-related rehabilitative services;

(c) By September 1990, minimum standards for facility, equipment, and personnel for level I, II, and III pediatric trauma care services;

(d) By September 1990, minimum standards required for verified prehospital trauma care services, including equipment and personnel;

(e) Personnel training requirements and programs for providers of trauma care. The department shall design programs which are accessible to rural providers including on-site training;

(f) State-wide emergency medical services and trauma care system objectives and priorities;

(g) Minimum standards for the development of facility patient care protocols and prehospital patient care protocols and patient care procedures;

(h) By July 1991, minimum standards for an effective emergency medical communication system;

(i) Minimum standards for an effective emergency medical services transportation system; and

(j) By July 1991, establish a program for emergency medical services and trauma care research and development;

(2) Establish state-wide standards, personnel training requirements and programs, system objectives and priorities, protocols and guidelines as required in subsection (1) of this section, by utilizing those standards adopted in the report of the Washington trauma advisory committee as authorized by chapter 183, Laws of 1988. In establishing standards for level IV or V trauma care services the department may adopt similar standards adopted for services provided in rural health care facilities authorized in chapter 70.175 RCW. The department may modify standards, personnel training requirements and programs, system objectives and priorities, and guidelines in rule if the department determines that such modifications are necessary to meet federal and other state requirements or are essential to allow the department and others to establish the system or should it determine that public health considerations or efficiencies in the delivery of emergency medical services and trauma care warrant such modifications;

(3) Designate emergency medical services and trauma care planning and service regions as provided for in this chapter;

(4) By July 1, 1992, establish the minimum and maximum number of hospitals and health care facilities in the state and within each emergency medical services and trauma care planning and service region that may provide designated trauma care services based upon approved regional emergency medical services and trauma care plans;

(5) By July 1, 1991, establish the minimum and maximum number of prehospital providers in the state and within each emergency medical services and trauma care planning and service region that may provide verified trauma care services based upon approved regional emergency medical services and trauma care plans;

(6) By July 1993, begin the designation of hospitals and health care facilities to provide designated trauma care services in accordance with needs identified in the state-wide emergency medical services and trauma care plan;

(7) By July 1990, adopt a format for submission of the regional plans to the department;

(8) By July 1991, begin the review and approval of regional emergency medical services and trauma care plans;

(9) By July 1992, prepare regional plans for those regions that do not submit a regional plan to the department that meets the requirements of this chapter;

(10) By October 1992, prepare and implement the state-wide emergency medical services and trauma care system plan incorporating the regional plans;

(11) Coordinate the state-wide emergency medical services and trauma care system to assure integration and smooth operation between the regions;

(12) Facilitate coordination between the emergency medical services and trauma care steering committee and the emergency medical services licensing and certification advisory committee;

(13) Monitor the state-wide emergency medical services and trauma care system;

(14) Conduct a study of all costs, charges, expenses, and levels of reimbursement associated with providers of trauma care services, and provide its findings and any recommendations regarding adequate and equitable reimbursement to trauma care providers to the legislature by July 1, 1991;

(15) Monitor the level of public and private payments made on behalf of trauma care patients to determine whether health care providers have been adequately reimbursed for the costs of care rendered such persons;

(16) By July 1991, design and establish the state-wide trauma care registry as authorized in RCW 70.168.090 to (a) assess the effectiveness of emergency medical services and trauma care delivery, and (b) modify standards and other system requirements to improve the provision of emergency medical services and trauma care;

(17) By July 1991, develop patient outcome measures to assess the effectiveness of emergency medical services and trauma care in the system;

(18) By July 1993, develop standards for regional emergency medical services and trauma care quality assurance programs required in RCW 70.168.090;

(19) Administer funding allocated to the department for the purpose of creating, maintaining, or enhancing the state-wide emergency medical services and trauma care system; and

(20) By October 1990, begin coordination and development of trauma prevention and education programs. [1990 c 269 § 8.]

70.168.070 Provision of trauma care service—

Designation. Any hospital or health care facility that desires to be authorized to provide a designated trauma care service shall request designation from the department. Designation involves a contractual relationship between the state and a hospital or health care facility whereby each agrees to maintain a level of commitment and resources sufficient to meet responsibilities and standards required by the state-wide emergency medical services and trauma care system plan. By January 1992, the department shall determine by rule the manner and form of such requests. Upon receiving a request, the department shall review the request to determine whether the hospital or health care facility is in compliance with standards for the trauma care service or services for which designation is desired. If requests are received from more than one hospital or health care facility

within the same emergency medical planning and trauma care planning and service region, the department shall select the most qualified applicant or applicants to be selected through a competitive process. Any applicant not designated may request a hearing to review the decision.

Designations are valid for a period of three years and are renewable upon receipt of a request for renewal prior to expiration from the hospital or health care facility. When an authorization for designation is due for renewal other hospitals and health care facilities in the area may also apply and compete for designation. Regional emergency medical and trauma care councils shall be notified promptly of designated hospitals and health care facilities in their region so they may incorporate them into the regional plan as required by this chapter. The department may revoke or suspend the designation should it determine that the hospital or health care facility is substantially out of compliance with the standards and has refused or been unable to comply after a reasonable period of time has elapsed. The department shall promptly notify the regional emergency medical and trauma care planning and service region of suspensions or revocations. Any facility whose designation has been revoked or suspended may request a hearing to review the action by the department as provided for in chapter 34.05 RCW.

As a part of the process to designate and renew the designation of hospitals authorized to provide level I, II, or III trauma care services or level I, II, and III pediatric trauma care services, the department shall contract for on-site reviews of such hospitals to determine compliance with required standards. The department may contract for on-site reviews of hospitals and health care facilities authorized to provide level IV or V trauma care services or level I, I-pediatric, II, or III trauma-related rehabilitative services to determine compliance with required standards. Members of on-site review teams and staff included in site visits are exempt from RCW 42.17.250 through 42.17.450. They may not divulge and cannot be subpoenaed to divulge information obtained or reports written pursuant to this section in any civil action, except, after in camera review, pursuant to a court order which provides for the protection of sensitive information of interested parties including the department: (1) In actions arising out of the department's designation of a hospital or health care facility pursuant to this section; (2) in actions arising out of the department's revocation or suspension of designation status of a hospital or health care facility under this section; or (3) in actions arising out of the restriction or revocation of the clinical or staff privileges of a health care provider as defined in *RCW 70.70.020 (1) and (2), subject to any further restrictions on disclosure in RCW 4.24.250 that may apply. Information that identifies individual patients shall not be publicly disclosed without the patient's consent. When a facility requests designation for more than one service, the department may coordinate the joint consideration of such requests.

The department may establish fees to help defray the costs of this section, though such fees shall not be assessed to health care facilities authorized to provide level IV and V trauma care services.

This section shall not restrict the authority of a hospital or a health care provider licensed under Title 18 RCW to provide services which it has been authorized to provide by state law. [1990 c 269 § 9.]

*Reviser's note: The reference to RCW 70.70.020 appears to be erroneous. RCW 7.70.020 was apparently intended.

70.168.080 Prehospital trauma care service—Verification—Compliance—Variance. (1) Any provider desiring to provide a verified prehospital trauma care service shall indicate on the licensing application how they meet the standards required for verification as a provider of this service. The department shall notify the regional emergency medical services and trauma care councils of the providers of verified trauma care services in their regions. The department may conduct on-site reviews of prehospital providers to assess compliance with the applicable standards.

(2) Should the department determine that a prehospital provider is substantially out of compliance with the standards, the department shall notify the regional emergency medical services and trauma care council. If the failure of a prehospital provider to comply with the applicable standards results in the region being out of compliance with its regional plan, the council shall take such steps necessary to assure the region is brought into compliance within a reasonable period of time. The council may seek assistance and funding from the department and others to provide training or grants necessary to bring a prehospital provider into compliance. The council may appeal to the department for modification of the regional plan if it is unable to assure continued compliance with the regional plan. The department may authorize modification of the plan if such modifications meet the requirements of this chapter. The department may suspend or revoke the authorization of a prehospital provider to provide a verified prehospital service if the provider has refused or been unable to comply after a reasonable period of time has elapsed. The council shall be notified promptly of any revocations or suspensions. Any prehospital provider whose verification has been suspended or revoked may request a hearing to review the action by the department as provided for in chapter 34.05 RCW.

(3) The department may grant a variance from provisions of this section if the department determines: (a) That no detriment to public health and safety will result from the variance, and (b) compliance with provisions of this section will cause a reduction or loss of existing prehospital services. Variances may be granted for a period not to exceed one year. A variance may be renewed by the department. If a renewal is granted, a plan of compliance shall be prepared specifying steps necessary to bring a provider or region into compliance and expected date of compliance.

(4) This section shall not restrict the authority of a provider licensed under Title 18 RCW to provide services which it has been authorized to provide by state law. [1990 c 269 § 10.]

70.168.090 State-wide data registry—Quality assurance program—Confidentiality. (1) By July 1991, the department shall establish a state-wide data registry to collect and analyze data on the incidence, severity, and causes of trauma, including traumatic brain injury. The department shall collect additional data on traumatic brain injury should additional data requirements be enacted by the legislature. The registry shall be used to improve the availability and delivery of prehospital and hospital trauma care services. Specific data elements of the registry shall be defined by rule by the department. To the extent possible, the department shall coordinate data collection from hospitals for the trauma registry with the state-wide hospital data system authorized in chapter 70.170 RCW. Every hospital, facility, or health care provider authorized to provide level I, II, III, IV, or V trauma care services, level I, II, or III pediatric trauma care services, level I, level I—pediatric, II, or III trauma-related rehabilitative services, and prehospital trauma-related services in the state shall furnish data to the registry. All other hospitals and prehospital providers shall furnish trauma data as required by the department by rule.

The department may respond to requests for data and other information from the registry for special studies and analysis consistent with requirements for confidentiality of patient and quality assurance records. The department may require requestors to pay any or all of the reasonable costs associated with such requests that might be approved.

(2) By January 1994, in each emergency medical services and trauma care planning and service region, a regional emergency medical services and trauma care systems quality assurance program shall be established by those facilities authorized to provide levels I, II, and III trauma care services. The systems quality assurance program shall evaluate trauma care delivery, patient care outcomes, and compliance with the requirements of this chapter. The emergency medical services medical program director and all other health care providers and facilities who provide trauma care services within the region shall be invited to participate in the regional emergency medical services and trauma care quality assurance program.

(3) Data elements related to the identification of individual patient's, provider's and facility's care outcomes shall be confidential, shall be exempt from RCW 42.17-.250 through 42.17.450, and shall not be subject to discovery by subpoena or admissible as evidence.

(4) Patient care quality assurance proceedings, records, and reports developed pursuant to this section are confidential, exempt from RCW 42.17.250 through 42.17.450, and are not subject to discovery by subpoena or admissible as evidence. In any civil action, except, after

in camera review, pursuant to a court order which provides for the protection of sensitive information of interested parties including the department: (a) In actions arising out of the department's designation of a hospital or health care facility pursuant to RCW 70.168.070; (b) in actions arising out of the department's revocation or suspension of designation status of a hospital or health care facility under RCW 70.168.070; or (c) in actions arising out of the restriction or revocation of the clinical or staff privileges of a health care provider as defined in RCW 7.70.020 (1) and (2), subject to any further restrictions on disclosure in RCW 4.24.250 that may apply. Information that identifies individual patients shall not be publicly disclosed without the patient's consent. [1990 c 269 § 11.]

70.168.100 Regional emergency medical services and trauma care councils. Regional emergency medical services and trauma care councils are established. The councils shall:

(1) By June 1990, begin the development of regional emergency medical services and trauma care plans to:

(a) Assess and analyze regional emergency medical services and trauma care needs;

(b) Identify personnel, agencies, facilities, equipment, training, and education to meet regional and local needs;

(c) Identify specific activities necessary to meet state-wide standards and patient care outcomes and develop a plan of implementation for regional compliance;

(d) Establish and review agreements with regional providers necessary to meet state standards;

(e) Establish agreements with providers outside the region to facilitate patient transfer;

(f) Include a regional budget;

(g) Establish the number and level of facilities to be designated which are consistent with state standards and based upon availability of resources and the distribution of trauma within the region;

(h) Identify the need for and recommend distribution and level of care of prehospital services to assure adequate availability and avoid inefficient duplication and lack of coordination of prehospital services within the region; and

(i) Include other specific elements defined by the department;

(2) By June 1991, begin the submission of the regional emergency services and trauma care plan to the department;

(3) Advise the department on matters relating to the delivery of emergency medical services and trauma care within the region;

(4) Provide data required by the department to assess the effectiveness of the emergency medical services and trauma care system;

(5) May apply for, receive, and accept 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 any activities related to the design, maintenance, or enhancements of the emergency medical

services and trauma care system in the region. The councils shall report in the regional budget the amount, source, and purpose of all gifts and payments. [1990 c 269 § 13.]

70.168.110 Planning and service regions. The department shall designate at least eight emergency medical services and trauma care planning and service regions so that all parts of the state are within such an area. These regional designations are to be made on the basis of efficiency of delivery of needed emergency medical services and trauma care. [1990 c 269 § 14; 1987 c 214 § 4; 1973 1st ex.s. c 208 § 6. Formerly RCW 18.73.060.]

70.168.120 Local and regional emergency medical services and trauma care councils—Power and duties.

(1) A county or group of counties may create a local emergency medical services and trauma care council composed of representatives of hospital and prehospital trauma care and emergency medical services providers, local elected officials, consumers, local law enforcement officials, and local government agencies involved in the delivery of emergency medical services and trauma care.

(2) The department shall establish regional emergency medical services and trauma care councils and shall appoint members to be comprised of a balance of hospital and prehospital trauma care and emergency medical services providers, local elected officials, consumers, local law enforcement representatives, and local government agencies involved in the delivery of trauma care and emergency medical services recommended by the local emergency medical services and trauma care councils within the region.

(3) Local emergency medical services and trauma care councils shall review, evaluate, and provide recommendations to the regional emergency medical services and trauma care council regarding the provision of emergency medical services and trauma care in the region, and provide recommendations to the regional emergency medical services and trauma care councils on the plan for emergency medical services and trauma care. [1990 c 269 § 15; 1987 c 214 § 6; 1983 c 112 § 8. Formerly RCW 18.73.073.]

70.168.130 Disbursement of funds to regional emergency medical services and trauma care councils—Grants to nonprofit agencies—Purposes.

(1) The department, with the assistance of the emergency medical services and trauma care steering committee, shall adopt a program for the disbursement of funds for the development, implementation, and enhancement of the emergency medical services and trauma care system. Under the program, the department shall disburse funds to each emergency medical services and trauma care regional council, or their chosen fiscal agent or agents, which shall be city or county governments, stipulating the purpose for which the funds shall be expended. The regional emergency medical services and trauma care council shall use such funds to make available matching grants in an amount not to exceed fifty percent of the

cost of the proposal for which the grant is made; provided, the department may waive or modify the matching requirement if it determines insufficient local funding exists and the public health and safety would be jeopardized if the proposal were not funded. Grants shall be made to any public or private nonprofit agency which, in the judgment of the regional emergency medical services and trauma care council, will best fulfill the purpose of the grant.

(2) Grants may be awarded for any of the following purposes:

- (a) Establishment and initial development of an emergency medical services and trauma care system;
- (b) Expansion and improvement of an emergency medical services and trauma care system;
- (c) Purchase of equipment for the operation of an emergency medical services and trauma care system;
- (d) Training and continuing education of emergency medical and trauma care personnel; and
- (e) Department approved research and development activities pertaining to emergency medical services and trauma care.

(3) Any emergency medical services agency or trauma care provider which receives a grant shall stipulate that it will:

- (a) Operate in accordance with applicable provisions and standards required under this chapter;
- (b) Provide, without prior inquiry as to ability to pay, emergency medical and trauma care to all patients requiring such care; and
- (c) Be consistent with applicable provisions of the regional emergency medical services and trauma care plan and the state-wide emergency medical services and trauma care system plan. [1990 c 269 § 16; 1987 c 214 § 8; 1979 ex.s. c 261 § 8. Formerly RCW 18.73.085.]

70.168.140 Prehospital provider liability. (1) No act or omission of any prehospital provider done or omitted in good faith while rendering emergency medical services in accordance with the approved regional plan shall impose any liability upon that provider.

(2) This section does not apply to the commission or omission of an act which is not within the field of the medical expertise of the provider.

(3) This section does not relieve a provider of any duty otherwise imposed by law.

(4) This section does not apply to any act or omission which constitutes gross negligence or willful or wanton misconduct.

(5) This section applies in addition to provisions already established in RCW 18.71.210. [1990 c 269 § 26.]

70.168.900 Chapter name. This chapter shall be known and cited as the "state-wide emergency medical services and trauma care system act." [1990 c 269 § 2.]

70.168.901 Severability—1990 c 269. 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. [1990 c 269 § 30.]

Chapter 70.170

HEALTH DATA AND CHARITY CARE

Sections

- 70.170.080 Assessments—Costs.
- 70.170.100 State-wide hospital data system—Design requirements—Reporting requirements—Data available upon request.

70.170.080 Assessments—Costs. The basic expenses for the hospital data collection and reporting activities of this chapter shall be financed by an assessment against hospitals of no more than four one-hundredths of one percent of each hospital's gross operating costs, to be levied and collected from and after that date, upon which the similar assessment levied under *chapter 70.39 RCW is terminated, 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 must be financed by a general fund appropriation by the legislature. All moneys collected under this section shall be deposited by the state treasurer in the hospital data collection account which is hereby created in the state treasury. The department may also charge, receive, and dispense funds or authorize any contractor or outside sponsor to charge for and reimburse the costs associated with special studies as specified in RCW 70.170.050.

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 department in succeeding years. [1991 1st sp.s. c 13 § 71; 1989 1st ex.s. c 9 § 508.]

*Reviser's note: Chapter 70.39 RCW was repealed by 1982 c 223 § 10, effective June 30, 1990.

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

70.170.100 State-wide hospital data system—Design requirements—Reporting requirements—Data available upon request. (1) The department is responsible for the development, implementation, and custody of a state-wide hospital data system. As part of the design stage for development of the system, the department shall undertake a needs assessment of the types of, and format for, hospital data needed by consumers, purchasers, payers, hospitals, and state government as consistent with the intent of this chapter. The department shall identify a set of hospital data elements and report specifications which satisfy these needs. The council shall review the design of the data system and may direct the department to contract with a private vendor for assistance in the design of the data system. The data elements, specifications, and other design features of this data system shall be made available for public review and comment and shall be published, with comments, as the department's first data plan by January 1, 1990.

(2) Subsequent to the initial development of the data system as published as the department's first data plan, revisions to the data system shall be considered through the department's development of a biennial data plan, as

proposed to, and funded by, the legislature through the biennial appropriations process. Costs of data activities outside of these data plans except for special studies shall be funded through legislative appropriations.

(3) In designing the state-wide hospital data system and any data plans, the department shall identify hospital data elements relating to both hospital finances and the use of services by patients. Data elements relating to hospital finances shall be reported by hospitals in conformance with a uniform system of reporting as specified by the department and shall include data elements identifying each hospital's revenues, expenses, contractual allowances, charity care, bad debt, other income, total units of inpatient and outpatient services, and other financial information reasonably necessary to fulfill the purposes of this chapter, for hospital activities as a whole and, as feasible and appropriate, for specified classes of hospital purchasers and payers. Data elements relating to use of hospital services by patients shall, at least initially, be the same as those currently compiled by hospitals through inpatient discharge abstracts and reported to the Washington state hospital commission.

(4) The state-wide hospital data system shall be uniform in its identification of reporting requirements for hospitals across the state to the extent that such uniformity is necessary to fulfill the purposes of this chapter. Data reporting requirements may reflect differences in hospital size; urban or rural location; scope, type, and method of providing service; financial structure; or other pertinent distinguishing factors. So far as possible, the data system shall be coordinated with any requirements of the trauma care data registry as authorized in RCW 70.168.090, the federal department of health and human services in its administration of the medicare program, and the state in its role of gathering public health statistics, so as to minimize any unduly burdensome reporting requirements imposed on hospitals.

(5) In identifying financial reporting requirements under the state-wide hospital data system, the department may require both annual reports and condensed quarterly reports, so as to achieve both accuracy and timeliness in reporting.

(6) In designing the initial state-wide hospital data system as published in the department's first data plan, the department shall review all existing systems of hospital financial and utilization reporting used in this state to determine their usefulness for the purposes of this chapter, including their potential usefulness as revised or simplified.

(7) Until such time as the state-wide hospital data system and first data plan are developed and implemented and hospitals are able to comply with reporting requirements, the department shall require hospitals to continue to submit the hospital financial and patient discharge information previously required to be submitted to the Washington state hospital commission. Upon publication of the first data plan, hospitals shall have a reasonable period of time to comply with any new reporting requirements and, even in the event that new reporting requirements differ greatly from past

requirements, shall comply within two years of July 1, 1989.

(8) The hospital data collected and maintained by the department shall be available for retrieval in original or processed form to public and private requestors within a reasonable period of time after the date of request. The cost of retrieving data for state officials and agencies shall be funded through the state general appropriation. The cost of retrieving data for individuals and organizations engaged in research or private use of data shall be funded by a fee schedule developed by the department which reflects the direct cost of retrieving the data in the requested form. [1990 c 269 § 12; 1989 1st ex.s. c 9 § 510.]

Severability—1990 c 269: See RCW 70.168.901.

Chapter 70.175

RURAL HEALTH SYSTEM PROJECT

Sections

70.175.050	Secretary's powers and duties.
70.175.130	Rural health care plan.

70.175.050 Secretary's powers and duties. The secretary shall have the following powers and duties:

(1) To design the project application and selection process, including a program to advertise the project to rural communities and encourage prospective applicants to apply. Project sites that receive seed grant funding may hire consultants and shall perform other activities necessary to meet participant requirements defined in this chapter. In considering selection of participants eligible for seed grant funding, the secretary should consider project sites where (a) existing access to health care is severely inadequate, (b) where a financially vulnerable health care facility is present, (c) where a financially vulnerable health care facility is present and an adjoining community in the same catchment area has a competing facility, or (d) where improvements in the delivery of primary care services, including preventive care services, is needed.

The department may obtain technical assistance support for project sites that are not selected to be funded sites. The secretary shall select these assisted project sites based upon merit and to the extent possible, based upon the desire to address specific health status outcomes;

(2) To design acceptable outcome measures which are based upon health status outcomes and are to be part of the community plan, to work with communities to set acceptable local outcome targets in the health care delivery system strategic plan, and to serve as a general resource to participants in the planning, administration, and evaluation of project sites;

(3) To assess and approve community strategic plans developed by participants, including an assessment of the technical and financial feasibility of implementing the plan and whether adequate local support for the plan is demonstrated;

(4) To define health care catchment areas, identify financially vulnerable health care facilities, and to identify

rural populations which are not receiving adequate health care services;

(5) To identify existing private and public resources which may serve as eligible consultants, identify technical assistance resources for communities in the project, create a register of public and private technical resource services available and provide the register to participants. The secretary shall screen consultants to determine their qualifications prior to including them on the register;

(6) To work with other state agencies, institutions of higher education, and other public and private organizations to coordinate technical assistance services for participants;

(7) To administer available funds for community use while participating in the project and establish procedures to assure accountability in the use of seed grant funds by participants;

(8) To define data and other minimum requirements for adequate evaluation of projects and to develop and implement an overall monitoring and evaluation mechanism for the projects;

(9) To act as facilitator for multiple applicants and entrants to the project;

(10) To report to the appropriate legislative committees and others from time to time on the progress of the projects including the identification of statutory and regulatory barriers to successful completion of rural health care delivery goals and an ongoing evaluation of the project. [1991 c 224 § 1; 1989 1st ex.s. c 9 § 705.]

70.175.130 Rural health care plan. The department may develop and implement a rural health care plan and may approve hospital and rural health care facility requests to be designated as essential access community hospitals or rural primary care hospitals so that such facilities may form rural health networks to preserve health care services in rural areas and thereby be eligible for federal program funding and enhanced medicare reimbursement. [1990 c 271 § 18.]

Chapter 70.180 RURAL HEALTH CARE

Sections

70.180.005	Finding—Health care professionals.
70.180.007	Repealed.
70.180.009	Finding—Rural training opportunities.
70.180.010	Repealed.
70.180.011	Definitions.
70.180.020	Health professional temporary substitute resource pool.
70.180.030	Registry of health care professionals—Conditions of participation.
70.180.040	Request procedure—Acceptance of gifts.
70.180.050	Repealed.
70.180.060	Repealed.
70.180.070	Repealed.
70.180.080	Repealed.
70.180.090	Repealed.
70.180.100	Repealed.
70.180.110	Rural training opportunities—Plan development—Report to legislature.
70.180.120	Midwifery—State-wide plan—Report to legislature.

70.180.130	Expenditures, funding.
70.180.900	Program review—Report to legislature.
70.180.910	Repealed.

70.180.005 Finding—Health care professionals.

The legislature finds that a health care access problem exists in rural areas of the state because rural health care providers are unable to leave the community for short-term periods of time to attend required continuing education training or for personal matters because their absence would leave the community without adequate medical care coverage. The lack of adequate medical coverage in geographically remote rural communities constitutes a threat to the health and safety of the people in those communities.

The legislature declares that it is in the public interest to recruit and maintain a pool of physicians, physician assistants, pharmacists, and advanced registered nurse practitioners willing and able on short notice to practice in rural communities on a short-term basis to meet the medical needs of the community. [1991 c 332 § 27; 1990 c 271 § 1.]

Application to scope of practice—Captions not law—1991 c 332: See notes following RCW 18.130.010.

70.180.007 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

70.180.009 Finding—Rural training opportunities.

The legislature finds that a shortage of physicians, nurses, pharmacists, and physician assistants exists in rural areas of the state. In addition, many education programs to train these health care providers do not include options for practical training experience in rural settings. As a result, many health care providers find their current training does not prepare them for the unique demands of rural practice.

The legislature declares that the availability of rural training opportunities as a part of professional medical, nursing, pharmacist, and physician assistant education would provide needed practical experience, serve to attract providers to rural areas, and help address the current shortage of these providers in rural Washington. [1990 c 271 § 14.]

70.180.010 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

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

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

(2) "Rural areas" means a rural area in the state of Washington as identified by the department. [1991 c 332 § 29.]

Application to scope of practice—Captions not law—1991 c 332: See notes following RCW 18.130.010.

70.180.020 Health professional temporary substitute resource pool. The department shall establish the health

professional temporary substitute resource pool. The purpose of the pool is to provide short-term physician, physician assistant, pharmacist, and advanced registered nurse practitioner personnel to rural communities where these health care providers:

- (1) Are unavailable due to provider shortages;
- (2) Need time off from practice to attend continuing education and other training programs; and
- (3) Need time off from practice to attend to personal matters or recover from illness.

The health professional temporary substitute resource pool is intended to provide short-term assistance and should complement active health provider recruitment efforts by rural communities where shortages exist. [1990 c 271 § 2.]

70.180.030 Registry of health care professionals—
Conditions of participation. (1) The department, in cooperation with [the] University of Washington school of medicine, the state's registered nursing programs, the state's pharmacy programs, and other appropriate public and private agencies and associations, shall develop and keep current a register of physicians, physician assistants, pharmacists, and advanced registered nurse practitioners who are available to practice on a short-term basis in rural communities of the state. The department shall periodically screen individuals on the registry for violations of the uniform disciplinary act as authorized in chapter 18.130 RCW. If a finding of unprofessional conduct has been made by the appropriate disciplinary authority against any individual on the registry, the name of that individual shall be removed from the registry and that person shall be made ineligible for the program. The department shall include a list of back-up physicians and hospitals who can provide support to health care providers in the pool. The register shall be compiled, published, and made available to all rural hospitals, public health departments and districts, rural pharmacies, and other appropriate public and private agencies and associations. The department shall coordinate with existing entities involved in health professional recruitment when developing the registry for the health professional temporary substitute resource pool.

(2) Eligible health care professionals are those licensed under chapters 18.57, 18.57A, 18.64, 18.71, and 18.71A RCW and advanced registered nurse practitioners licensed under chapter 18.88 RCW.

(3) Participating health care professionals shall receive:

(a) Reimbursement for travel to and from the rural community and for lodging at a rate determined under RCW 43.03.050 and 43.03.060;

(b) Medical malpractice insurance purchased by the department, or the department may reimburse participants for medical malpractice insurance premium costs for medical liability while providing health care services in the program, if the services provided are not covered by the participant's or local provider's existing medical malpractice insurance; and

(c) Information on back-up support from other physicians and hospitals in the area to the extent necessary and available.

(4) The department may require rural communities to participate in health professional recruitment programs as a condition for providing a temporary substitute health care professional if the community does not have adequate permanent health care personnel. To the extent deemed appropriate and subject to funding, the department may also require communities to participate in other programs or projects, such as the rural health system project authorized in chapter 70.175 RCW, that are designed to assist communities to reorganize the delivery of rural health care services.

(5) The department may require a community match for assistance provided in subsection (3) of this section if it determines that adequate community resources exist.

(6) The maximum continuous period of time a participating health professional may serve in a community is ninety days. The department may modify or waive this limitation should it determine that the health and safety of the community warrants a waiver or modification. The community shall be responsible for all salary expenses of participating health professionals. [1990 c 271 § 3.]

70.180.040 Request procedure—Acceptance of gifts. (1) Requests for a temporary substitute health care professional may be made to the department by the local rural hospital, public health department or district, community health clinic, local practicing physician, physician assistant, pharmacist, or advanced registered nurse practitioner, or local city or county government.

(2) The department shall:

(a) Establish a manner and form for receiving requests;

(b) Minimize paperwork and compliance requirements for participant health care professionals and entities requesting assistance; and

(c) Respond promptly to all requests for assistance.

(3) The department may apply for, receive, and accept gifts and other payments, including property and services, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts to operate the pool. The department shall make available upon request to the appropriate legislative committees information concerning the source, amount, and use of such gifts or payments. [1990 c 271 § 4.]

70.180.050 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

70.180.060 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

70.180.070 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

70.180.080 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

70.180.090 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

70.180.100 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

70.180.110 Rural training opportunities—Plan development—Report to legislature. (1) The department, in consultation with at least the higher education coordinating board, the *state board for community college education, the superintendent of public instruction, and state-supported education programs in medicine, pharmacy, and nursing, shall develop a plan for increasing rural training opportunities for students in medicine, pharmacy, and nursing. The plan shall provide for direct exposure to rural health professional practice conditions for students planning careers in medicine, pharmacy, and nursing.

(2) The department and the medical, pharmacy, and nurse education programs shall:

(a) Inventory existing rural-based clinical experience programs, including internships, clerkships, residencies, and other training opportunities available to students pursuing degrees in nursing, pharmacy, and medicine;

(b) Identify where training opportunities do not currently exist and are needed;

(c) Develop recommendations for improving the availability of rural training opportunities;

(d) Develop recommendations on establishing agreements between education programs to assure that all students in medical, pharmacist, and nurse education programs in the state have access to rural training opportunities; and

(e) Review private and public funding sources to finance rural-based training opportunities.

(3) The department shall report to the house of representatives and senate standing committees on health care by December 1, 1990, with their findings and recommendations including needed legislative changes. [1990 c 271 § 15.]

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

70.180.120 Midwifery—State-wide plan—Report to legislature. The department, in consultation with training programs that lead to licensure in midwifery and certification as a certified nurse midwife, and other appropriate private and public groups, shall develop a state-wide plan to address access to midwifery services.

The plan shall include at least the following: (1) Identification of maternity service shortage areas in the state where midwives could reduce the shortage of services; (2) an inventory of current training programs and

preceptorship activities available to train licensed and certified nurse midwives; (3) identification of gaps in the availability of training due to such factors as geographic or economic conditions that prevent individuals from seeking training; (4) identification of other barriers to utilizing midwives; (5) identification of strategies to train future midwives such as developing training programs at community colleges and universities, using innovative telecommunications for training in rural areas, and establishing preceptorship programs accessible to prospective midwives in shortage areas; (6) development of recruitment strategies; and (7) estimates of expected costs associated in recruitment and training.

The plan shall identify the most expeditious and cost-efficient manner to recruit and train midwives to meet the current shortages. Plan development and implementation shall be coordinated with other state policy efforts directed toward, but not limited to, maternity care access, rural health care system organization, and provider recruitment for shortage and medically underserved areas of the state.

The department shall submit a copy of the plan to the senate and house of representatives health care committees by December 1, 1990. [1990 c 271 § 16.]

70.180.130 Expenditures, funding. Any additional expenditures incurred by the University of Washington from provisions of *this act shall be funded from existing financial resources. [1990 c 271 § 28.]

*Reviser's note: For codification of "this act," see Codification Tables, Supplement Volume 9A.

70.180.900 Program review—Report to legislature. By September 1, 1995, the department shall review the continuing need for the program and recommend the need for its continuation. It shall report its findings to the senate and house of representatives committees on health care by December 1, 1995. [1990 c 271 § 17.]

70.180.910 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 70.185

RURAL AREAS—HEALTH CARE PROFESSIONAL RECRUITMENT AND RETENTION

Sections	
70.185.010	Definitions.
70.185.020	State-wide recruitment and retention clearinghouse.
70.185.030	Community-based recruitment and retention projects—Duties of department.
70.185.040	Rules.
70.185.050	Secretary's powers and duties.
70.185.060	Duties and responsibilities of participating communities.
70.185.070	Cooperation of state agencies.
70.185.080	Participants authorized to contract—Penalty—Secretary and state exempt from liability.
70.185.900	Application to scope of practice—Captions not law—1991 c 332.

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

- (1) "Department" means the department of health.
- (2) "Health care professional recruitment and retention strategic plan" means a plan developed by the participant and includes identification of health care personnel needs of the community, how these professionals will be recruited and retained in the community following recruitment.
- (3) "Institutions of higher education" means educational institutions as defined in RCW 28B.10.016.
- (4) "Local administrator" means an individual or organization representing the participant who may enter into legal agreements on behalf of the participant.
- (5) "Participant" means communities, counties, and regions that serve as a health care catchment area where the project site is located.
- (6) "Project" means the community-based retention and recruitment project.
- (7) "Project site" means a site selected to participate in the project.
- (8) "Secretary" means the secretary of health. [1991 c 332 § 7.]

70.185.020 State-wide recruitment and retention clearinghouse. The department, in consultation with appropriate private and public entities, shall establish a health professional recruitment and retention clearinghouse. The clearinghouse shall:

- (1) Inventory and classify the current public and private health professional recruitment and retention efforts;
- (2) Identify recruitment and retention program models having the greatest success rates;
- (3) Identify recruitment and retention program gaps;
- (4) Work with existing recruitment and retention programs to better coordinate state-wide activities and to make such services more widely known and broadly available;
- (5) Provide general information to communities, health care facilities, and others about existing available programs;
- (6) Work in cooperation with private and public entities to develop new recruitment and retention programs;
- (7) Identify needed recruitment and retention programming for state institutions, county public health departments and districts, county human service agencies, and other entities serving substantial numbers of public pay and charity care patients, and may provide to these entities when they have been selected as participants necessary recruitment and retention assistance including:
 - (a) Assistance in establishing or enhancing recruitment of health care professionals;
 - (b) Recruitment on behalf of sites unable to establish their own recruitment program; and
 - (c) Assistance with retention activities when practitioners of the health professional loan repayment and scholarship program authorized by *chapter 18.150 RCW are present in the practice setting. [1991 c 332 § 8.]

*Reviser's note: Chapter 18.150 RCW was recodified as chapter 28B.115 RCW by 1991 c 332 § 36.

70.185.030 Community-based recruitment and retention projects—Duties of department. (1) The department shall establish up to three community-based recruitment and retention project sites to provide financial and technical assistance to participating communities. The goal of the project is to help assure the availability of health care providers in rural areas of Washington state.

(2) Administrative costs necessary to implement this project shall be kept at a minimum to insure the maximum availability of funds for participants.

(3) The secretary may contract with third parties for services necessary to carry out activities to implement this chapter where this will promote economy, avoid duplication of effort, and make the best use of available expertise.

(4) The secretary may apply for, receive, and accept 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 related to the delivery of health care in rural areas.

(5) In designing and implementing the project the secretary shall coordinate the project with the Washington rural health system project as authorized under chapter 70.175 RCW to consolidate administrative duties and reduce costs. [1991 c 332 § 9.]

70.185.040 Rules. The department shall adopt rules consistent with this chapter to carry out the purpose of this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. All rules and procedures adopted by the department shall minimize paperwork and compliance requirements for participants and should not be complex in nature so as to serve as a barrier or disincentive for prospective participants applying for the project. [1991 c 332 § 10.]

70.185.050 Secretary's powers and duties. The secretary shall have the following powers and duties:

(1) To design the project application and selection process, including a program to advertise the project to rural communities and encourage prospective applicants to apply. Subject to funding, project sites shall be selected that are eligible to receive funding. Funding shall be used to hire consultants and perform other activities necessary to meet participant requirements under this chapter. The secretary shall require at least fifty percent matching funds or in-kind contributions from participants. In considering selection of participants eligible for seed grant funding, the secretary should consider project sites where (a) existing access to health care is severely inadequate, (b) recruitment and retention problems have been chronic, (c) the community is in need of primary care practitioners, or (d) the community has unmet health care needs for specific target populations;

(2) To design acceptable health care professional recruitment and retention strategic plans, and to serve as a

general resource to participants in the planning, administration, and evaluation of project sites;

(3) To assess and approve strategic plans developed by participants, including an assessment of the technical and financial feasibility of implementing the plan and whether adequate local support for the plan is demonstrated;

(4) To identify existing private and public resources that may serve as eligible consultants, identify technical assistance resources for communities in the project, create a register of public and private technical resource services available, and provide the register to participants. The secretary shall screen consultants to determine their qualifications prior to including them on the register;

(5) To work with other state agencies, institutions of higher education, and other public and private organizations to coordinate technical assistance services for participants;

(6) To administer available funds for community use while participating in the project and establish procedures to assure accountability in the use of seed grant funds by participants;

(7) To define data and other minimum requirements for adequate evaluation of projects and to develop and implement an overall monitoring and evaluation mechanism for the projects;

(8) To act as facilitator for multiple applicants and entrants to the project;

(9) To report to the appropriate legislative committees and others from time to time on the progress of the projects including the identification of statutory and regulatory barriers to successful completion of rural health care delivery goals and an ongoing evaluation of the project. [1991 c 332 § 11.]

70.185.060 Duties and responsibilities of participating communities. The duties and responsibilities of participating communities shall include:

(1) To involve major health care providers, businesses, public officials, and other community leaders in project design, administration, and oversight;

(2) To identify an individual or organization to serve as the local administrator of the project. The secretary may require the local administrator to maintain acceptable accountability of seed grant funding;

(3) To coordinate and avoid duplication of public health and other health care services;

(4) To assess and analyze community health care professional needs;

(5) To write a health care professional recruitment and retention strategic plan;

(6) To screen and contract with consultants for technical assistance if the project site was selected to receive funding and assistance is needed;

(7) To monitor and evaluate the project in an ongoing manner;

(8) To provide data and comply with other requirements of the administrator that are intended to evaluate the effectiveness of the projects;

(9) To assure that specific populations with unmet health care needs have access to services. [1991 c 332 § 12.]

70.185.070 Cooperation of state agencies. (1) The secretary may call upon other agencies of the state to provide available information to assist the secretary in meeting the responsibilities under this chapter. This information shall be supplied as promptly as circumstances permit.

(2) The secretary may call upon other state agencies including institutions of higher education as authorized under Titles 28A and 28B RCW to identify and coordinate the delivery of technical assistance services to participants in meeting the responsibilities of this chapter. The state agencies, vocational-technical institutions, and institutions of higher education shall cooperate and provide technical assistance to the secretary to the extent that current funding for these entities permits. [1991 c 332 § 13.]

70.185.080 Participants authorized to contract—Penalty—Secretary and state exempt from liability.

(1) Participants are authorized to use funding granted to them by the secretary for the purpose of contracting for technical assistance services. Participants shall use only consultants identified by the secretary for consulting services unless the participant can show that an alternative consultant is qualified to provide technical assistance and is approved by the secretary. Adequate records shall be kept by the participant showing project site expenditures from grant moneys. Inappropriate use of grant funding is a gross misdemeanor and shall incur the penalties under chapter 9A.20 RCW.

(2) In providing a list of qualified consultants the secretary and the state shall not be held responsible for assuring qualifications of consultants and shall be held harmless for the actions of consultants. Furthermore, the secretary and the state shall not be held liable for the failure of participants to meet contractual obligations established in connection with project participation. [1991 c 332 § 14.]

70.185.900 Application to scope of practice—Captions not law—1991 c 332. See notes following RCW 18.130.010.

Title 71 MENTAL ILLNESS

Chapters

71.05	Mental illness.
71.06	Sexual psychopaths.
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Chapter 71.05
MENTAL ILLNESS

Sections

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71.05.670	Treatment records—Violations—Civil action. (Contingent effective date.)

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

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

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

71.05.130 Duties of prosecuting attorney and attorney general. 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: PROVIDED, That after January 1, 1980, the attorney general shall represent and provide legal services and advice to state hospitals or institutions with regard to all provisions of and proceedings under this chapter except in proceedings initiated by such hospitals and institutions seeking fourteen day detention. [1991 c 105 § 3; 1989 c 120 § 4; 1979 ex.s. c 215 § 8; 1973 1st ex.s. c 142 § 18.]

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

71.05.135 Mental health commissioners—Appointment. (Effective unless the proposed amendment to Article IV, § 23 of the state Constitution is approved by the voters at the November 1991 general election.) In each county with a population of less than one million, the superior court may appoint the following persons to assist the superior court in disposing of its business: PROVIDED, That such positions may not be created without prior consent of the county legislative authority:

(1) One or more attorneys to act as mental health commissioners; and

(2) Such investigators, stenographers, and clerks as the court shall find necessary to carry on the work of the mental health commissioners.

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

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

Severability—1989 c 174: "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." [1989 c 174 § 4.]

71.05.135 Court commissioners—Appointment. (Effective December 6, 1991, if the proposed amendment to Article IV, § 23 of the state Constitution is approved by the voters at the November 1991 general election.) In each county with a population of less than one million, the superior court may appoint court commissioners in accordance with chapter 2.24 RCW and may appoint the following additional persons to assist the superior court in disposing of its business: PROVIDED, That

such positions may not be created without prior consent of the county legislative authority:

Such investigators, stenographers, and clerks as the court shall find necessary to carry on the work of the court commissioners.

The additional appointments provided for in this section shall be made by a majority vote of the judges of the superior court of the county and may be in addition to all other appointments of commissioners and other judicial attaches otherwise authorized by law. Investigators shall serve at the pleasure of the judges appointing them and shall receive such compensation as the county legislative authority shall determine. The appointments may be full or part-time positions. [1991 c 363 § 146; 1991 c 300 § 6; 1989 c 174 § 1.]

Reviser's note: This section was amended by 1991 c 300 § 6 and by 1991 c 363 § 146, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

Contingent effective date—1991 c 300: See note following RCW 2.24.010.

Severability—1989 c 174: "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." [1989 c 174 § 4.]

71.05.137 Court commissioners—Authority. (Effective December 6, 1991, if the proposed amendment to Article IV, § 23 of the state Constitution is approved by the voters at the November 1991 general election.) The judges of the superior court of the county by majority vote may authorize court commissioners, appointed pursuant to chapter 2.24 RCW, to perform any or all of the following duties:

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

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

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

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

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

(6) Cause the orders and findings to be entered in the same manner as orders and findings are entered in cases in the superior court. [1991 c 300 § 7; 1989 c 174 § 2.]

Contingent effective date—1991 c 300: See note following RCW 2.24.010.

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

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 or her admission, be examined and evaluated by a licensed physician who may be assisted by a physician assistant according to chapter 18.71A RCW or a nurse practitioner according to chapter 18.88 RCW and a mental health professional as defined in this chapter, and shall receive such treatment and care as his or her condition requires including treatment on an outpatient basis for the period that he or she 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 or her 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 or her professional designee, the person presents a likelihood of serious harm to himself or herself 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.

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

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. [1991 c 364 § 11; 1991 c 105 § 4; 1989 c 120 § 6; 1987 c 439 § 2; 1975 1st ex.s. c 199 § 4; 1974 ex.s. c 145 § 14; 1973 1st ex.s. c 142 § 26.]

Reviser's note: This section was amended by 1991 c 105 § 4 and by 1991 c 364 § 11, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

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

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

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

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

(b) For short-term treatment up to thirty days, the right to refuse antipsychotic medications unless there is an additional concurring medical opinion approving medication.

(c) For continued treatment beyond thirty days through the hearing on any petition filed under RCW 71.05.370(7), the right to periodic review of the decision to medicate by the medical director or designee.

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

(e) Documentation in the medical record of the physician's attempt to obtain informed consent and the reasons why antipsychotic medication is being administered over the person's objection or lack of consent. [1991 c 105 § 1.]

Severability—1991 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." [1991 c 105 § 6.]

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

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

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

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

(4) The notice provisions of this section are in addition to those provided in RCW 71.05.425. [1990 c 3 § 111; 1989 c 401 § 1; 1986 c 67 § 2.]

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

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 or her own clothes and to keep and use his or her 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 or her own money for canteen expenses and small purchases;

(3) To have access to individual storage space for his or her 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 administration of antipsychotic medications beyond the hearing conducted pursuant to RCW 71.05.320(2) or the performance of electroconvulsant therapy or surgery, except emergency life-saving surgery, unless ordered by a court of competent jurisdiction pursuant to the following standards and procedures:

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

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

substituted judgment for the patient as if he or she were competent to make such a determination.

(c) The person shall be present at any hearing on a request to administer antipsychotic medication or electroconvulsant therapy filed pursuant to this subsection. The person has the right: (i) To be represented by an attorney; (ii) to present evidence; (iii) to cross-examine witnesses; (iv) to have the rules of evidence enforced; (v) to remain silent; (vi) to view and copy all petitions and reports in the court file; and (vii) to be given reasonable notice and an opportunity to prepare for the hearing. The court may appoint a psychiatrist, psychologist within their scope of practice, or physician to examine and testify on behalf of such person. The court shall appoint a psychiatrist, psychologist within their scope of practice, or physician designated by such person or the person's counsel to testify on behalf of the person in cases where an order for electroconvulsant therapy is sought.

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

(e) Any person detained pursuant to RCW 71.05.320(2), who subsequently refuses antipsychotic medication, shall be entitled to the procedures set forth in RCW 71.05.370(7).

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

(i) A person presents an imminent likelihood of serious harm to self or others;

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

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

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

(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 or her under any circumstances. [1991 c 105 § 5; 1989 c 120 § 8; 1974 ex.s. c 145 § 26; 1973 1st ex.s. c 142 § 42.]

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

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 communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing outpatient services to the operator of a care facility in which the patient resides.

(3) 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.

(4) 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.

(5) 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/ ----- "

(6) To the courts as necessary to the administration of this chapter.

(7) To law enforcement officers, public health officers, or personnel of the department of corrections or the indeterminate sentence review board for persons who are the subject of the records and who are committed to the custody of the department of corrections or indeterminate sentence review board which information or records are necessary to carry out the responsibilities of their

office. Except for dissemination of information released pursuant to RCW 71.05.425 and 4.24.550, regarding persons committed under this chapter under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, the extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary 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 or personnel of the department of corrections or indeterminate sentence review board 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.

(8) To the attorney of the detained person.

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

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

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

(12) Civil liability and immunity for the release of information about a particular person who is committed to the department under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

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 except in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial or in a civil commitment proceeding pursuant to chapter 71.09 RCW. 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. [1990 c 3 § 112; 1986 c 67 § 8; 1985 c 207 § 1; 1983 c 196 § 4; 1979 ex.s. c 215 § 17; 1975 1st ex.s. c 199 § 10; 1974 ex.s. c 145 § 27; 1973 1st ex.s. c 142 § 44.]

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

71.05.420 Records of disclosure. Except as provided in RCW 71.05.425, 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. [1990 c 3 § 113; 1973 1st ex.s. c 142 § 47.]

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

71.05.425 Persons committed following dismissal of sex or violent offense—Notification of conditional release, final discharge, leave, transfer, or escape—To whom given—Definitions. (1)(a) Except as provided in subsection (2) of this section, at the earliest possible date, and in no event later than ten days before conditional release, final discharge, authorized leave under RCW 71.05.325(2), or transfer to a less-restrictive facility than a state mental hospital, the superintendent shall send written notice of conditional release, final discharge, authorized leave, or transfer of a person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex or violent offense pursuant to RCW 10.77.090(3) to the following:

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

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

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has

been requested in writing about a specific person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex or violent offense pursuant to RCW 10.77.090(3):

(i) The victim of the sex or violent crime that was dismissed pursuant to RCW 10.77.090(3) preceding commitment under RCW 71.05.280(3) or 71.05.320(2)(c) or the victim's next of kin if the crime was a homicide;

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

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

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

(2) If a person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex or violent offense pursuant to RCW 10.77.090(3) escapes, the superintendent shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the person resided immediately before the person's arrest. If previously requested, the superintendent shall also notify the witnesses and the victim of the sex or violent crime that was dismissed pursuant to RCW 10.77.090(3) preceding commitment under RCW 71.05.280(3) or 71.05.320(2) or the victim's next of kin if the crime was a homicide. In addition, the secretary shall also notify appropriate parties pursuant to RCW 71.05.410. If the person is recaptured, the superintendent shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

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

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

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

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

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

(c) "Next of kin" means a person's spouse, parents, siblings, and children. [1990 c 3 § 109.]

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

71.05.427 Persons committed following dismissal of sex offense—Release of information authorized. In addition to any other information required to be released

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under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public, concerning a specific person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex offense as defined in RCW 9.94A.030. [1990 c 3 § 110.]

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

71.05.440 Action for unauthorized release of confidential information—Liquidated damages—Trebble damages—Injunction. Except as provided in RCW 4.24.550, any person may bring an action against an individual who has willfully released confidential information or records concerning him or her 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 her or his or her 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 or she prevail in an action authorized by this section, reasonable attorney fees in addition to those otherwise provided by law. [1990 c 3 § 114; 1974 ex.s. c 145 § 28; 1973 1st ex.s. c 142 § 49.]

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

71.05.670 Treatment records—Violations—Civil action. (Contingent effective date.) Except as provided in RCW 4.24.550, any person, including the state or any political subdivision of the state, violating *RCW 71.05.610 through 71.05.690 shall be subject to the provisions of RCW 71.05.440. [1990 c 3 § 115; 1989 c 205 § 17.]

***Reviser's note:** The reference in this section to "sections 10 through 19 of this act" is incorrect and should have been "sections 11 through 19 of this act," which is how the reference has been codified.

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

Contingent effective date—1989 c 205 §§ 11-19: See note following RCW 71.05.610.

Chapter 71.06

SEXUAL PSYCHOPATHS

Sections

71.06.135 Sexual psychopaths—Release of information authorized.

71.06.135 Sexual psychopaths—Release of information authorized. In addition to any other information

required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public, concerning a specific sexual psychopath committed under this chapter. [1990 c 3 § 120.]

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

Chapter 71.09

SEXUALLY VIOLENT PREDATORS

Sections	
71.09.010	Findings.
71.09.020	Definitions.
71.09.030	Sexually violent predator petition—Prosecuting attorney or attorney general may file.
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71.09.060	Trial—Determination—Commitment procedures.
71.09.070	Annual examinations.
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71.09.090	Petition for release—Procedures.
71.09.100	Subsequent petitions.
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71.09.900	Index, part headings not law—1990 c 3.
71.09.901	Severability—1990 c 3.
71.09.902	Effective dates—Application—1990 c 3.

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

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

(1) "Sexually violent predator" means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence.

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

(3) "Predatory" means acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization.

(4) "Sexually violent offense" means an act committed on, before, or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as rape in the first degree, rape in the second degree by forcible compulsion, rape of a child in the first or second degree, statutory rape in the first or second degree, indecent liberties by forcible compulsion, indecent liberties against a child under age fourteen, incest against a child under age fourteen, or child molestation in the first or second degree; (b) a felony offense in effect at any time prior to July 1, 1990, that is comparable to a sexually violent offense as defined in (a) of this subsection, or any federal or out-of-state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this subsection; (c) an act of murder in the first or second degree, assault in the first or second degree, kidnapping in the first or second degree, burglary in the first degree, residential burglary, or unlawful imprisonment, which act, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to chapter 71.09 RCW, has been determined beyond a reasonable doubt to have been sexually motivated, as that term is defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the felonies designated in (a), (b), or (c) of this subsection. [1990 1st ex.s. c 12 § 2; 1990 c 3 § 1002.]

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

71.09.030 Sexually violent predator petition—Prosecuting attorney or attorney general may file. When it appears that: (1) The sentence of a person who has been convicted of a sexually violent offense is about to expire, or has expired on, before, or after July 1, 1990; (2) the term of confinement of a person found to have committed a sexually violent offense as a juvenile is about to expire, or has expired on, before, or after July 1, 1990; (3) a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial is about to be released, or has been released on, before, or after July 1, 1990, pursuant to RCW 10.77.090(3); or (4) a person who has been

found not guilty by reason of insanity of a sexually violent offense is about to be released, or has been released on, before, or after July 1, 1990, pursuant to RCW 10.77.020(3); and it appears that the person may be a sexually violent predator, the prosecuting attorney of the county where the person was convicted or charged or the attorney general if requested by the prosecuting attorney may file a petition alleging that the person is a "sexually violent predator" and stating sufficient facts to support such allegation. [1990 1st ex.s. c 12 § 3; 1990 c 3 § 1003.]

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

71.09.040 Sexually violent predator petition—Judicial determination—Transfer for evaluation. Upon the filing of a petition under RCW 71.09.030, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such determination is made the judge shall direct that the person be taken into custody and the person shall be transferred to an appropriate facility for an evaluation as to whether the person is a sexually violent predator. The evaluation shall be conducted by a person deemed to be professionally qualified to conduct such an examination pursuant to rules developed by the department of social and health services. In adopting such rules, the department of social and health services shall consult with the department of health and the department of corrections. [1990 c 3 § 1004.]

71.09.050 Trial—Rights of parties. Within forty-five days after the filing of a petition pursuant to RCW 71.09.030, the court shall conduct a trial to determine whether the person is a sexually violent predator. At all stages of the proceedings under this chapter, any person subject to this chapter shall be entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist him or her. Whenever any person is subjected to an examination under this chapter, he or she may retain experts or professional persons to perform an examination on their behalf. When the person wishes to be examined by a qualified expert or professional person of his or her own choice, such examiner shall be permitted to have reasonable access to the person for the purpose of such examination, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall, upon the person's request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf. The person, the prosecuting attorney or attorney general, or the judge shall have the right to demand that the trial be before a jury. If no demand is made, the trial shall be before the court. [1990 c 3 § 1005.]

71.09.060 Trial—Determination—Commitment procedures. (1) The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the state alleges that the prior

sexually violent offense that forms the basis for the petition for commitment was an act that was sexually motivated as provided in RCW 71.09.020(4)(c), the state must prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated as defined in RCW 9.94A.030. If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the department of social and health services in a secure facility for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large. Such control, care, and treatment shall be provided at a facility operated by the department of social and health services. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct the person's release.

(2) If the person charged with a sexually violent offense has been found incompetent to stand trial, and is about to or has been released pursuant to RCW 10.77.090(3), and his or her commitment is sought pursuant to subsection (1) of this section, the court shall first hear evidence and determine whether the person did commit the act or acts charged if the court did not enter a finding prior to dismissal under RCW 10.77.090(3) that the person committed the act or acts charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on his or her own behalf, the extent to which the evidence could be reconstructed without the assistance of the person, and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, it shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this section.

(3) The state shall comply with RCW 10.77.220 while confining the person pursuant to this chapter. The facility shall not be located on the grounds of any state mental facility or regional habilitation center because these institutions are insufficiently secure for this population. [1990 1st ex.s. c 12 § 4; 1990 c 3 § 1006.]

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

71.09.070 Annual examinations. Each person committed under this chapter shall have a current examination of his or her mental condition made at least once every year. The person may retain, or if he or she is indigent and so requests, the court may appoint a qualified expert or a professional person to examine him or her,

and such expert or professional person shall have access to all records concerning the person. The periodic report shall be provided to the court that committed the person under this chapter. [1990 c 3 § 1007.]

71.09.080 Detention and commitment to conform to constitutional requirements. The involuntary detention or commitment of persons under this chapter shall conform to constitutional requirements for care and treatment. [1990 c 3 § 1008.]

71.09.090 Petition for release—Procedures. (1) If the secretary of the department of social and health services determines that the person's mental abnormality or personality disorder has so changed that the person is not likely to commit predatory acts of sexual violence if released, the secretary shall authorize the person to petition the court for release. The petition shall be served upon the court and the prosecuting attorney. The court, upon receipt of the petition for release, shall within forty-five days order a hearing. The prosecuting attorney or the attorney general, if requested by the county, shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of his or her choice. The hearing shall be before a jury if demanded by either the petitioner or the prosecuting attorney or attorney general. The burden of proof shall be upon the prosecuting attorney or attorney general to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and that if discharged is likely to commit predatory acts of sexual violence.

(2) Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court for discharge without the secretary's approval. The secretary shall provide the committed person with an annual written notice of the person's right to petition the court for release over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall forward the notice and waiver form to the court with the annual report. If the person does not affirmatively waive the right to petition, the court shall set a show cause hearing to determine whether facts exist that warrant a hearing on whether the person's condition has so changed that he or she is safe to be at large. The committed person shall have a right to have an attorney represent him or her at the show cause hearing but the person is not entitled to be present at the show cause hearing. If the court at the show cause hearing determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be at large and will not engage in acts of sexual violence if discharged, then the court shall set a hearing on the issue. At the hearing, the committed person shall be entitled to be present and to the benefit of all constitutional protections that were afforded to the person at the initial commitment proceeding. The prosecuting attorney or the attorney general if requested by the county shall represent the state and shall have a right to a jury

trial and to have the committed person evaluated by experts chosen by the state. The committed person shall also have the right to have experts evaluate him or her on his or her behalf and the court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder remains such that the person is not safe to be at large and if released will engage in acts of sexual violence. [1990 c 3 § 1009.]

71.09.100 Subsequent petitions. Nothing in this chapter shall prohibit a person from filing a petition for discharge pursuant to this chapter. However, if a person has previously filed a petition for discharge without the secretary's approval and the court determined, either upon review of the petition or following a hearing, that the petitioner's petition was frivolous or that the petitioner's condition had not so changed that he or she was safe to be at large, then the court shall deny the subsequent petition unless the petition contains facts upon which a court could find that the condition of the petitioner had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from committed persons without the secretary's approval, the court shall endeavor whenever possible to review the petition and determine if the petition is based upon frivolous grounds and if so shall deny the petition without a hearing. [1990 c 3 § 1010.]

71.09.110 Department of social and health services—Duties—Reimbursement. The department of social and health services shall be responsible for all costs relating to the evaluation and treatment of persons committed to their custody under any provision of this chapter. Reimbursement may be obtained by the department for the cost of care and treatment of persons committed to its custody pursuant to RCW 43.20B.330 through 43.20B.370. [1990 c 3 § 1011.]

71.09.120 Release of information authorized. In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public, concerning a specific sexually violent predator committed under this chapter. [1990 c 3 § 1012.]

71.09.900 Index, part headings not law—1990 c 3. See RCW 18.155.900.

71.09.901 Severability—1990 c 3. See RCW 18.155.901.

71.09.902 Effective dates—Application—1990 c 3. See RCW 18.155.902.

Chapter 71.24

COMMUNITY MENTAL HEALTH SERVICES ACT

Sections

71.24.015	Legislative intent and policy.
71.24.025	Definitions.
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71.24.045	County authority powers and duties.
71.24.300	Regional support networks—Generally.
71.24.800	Repealed.

Funding: RCW 43.79.201 and 79.01.007.

71.24.015 Legislative intent and policy. It is the intent of the legislature to establish a community mental health program which shall help people experiencing mental illness to retain a respected and productive position in the community. This will be accomplished through programs which provide for:

(1) Access to mental health services for adults of the state who are acutely mentally ill, chronically mentally ill, or seriously disturbed and children of the state who are acutely mentally ill, severely emotionally disturbed, or seriously disturbed, which services recognize the special needs of underserved populations, including minorities, children, the elderly, disabled, and low-income persons. It is also the purpose of this chapter to promote the early identification of mentally ill children and to ensure that they receive the mental health care and treatment which is appropriate to their developmental level. This care should improve home, school, and community functioning, maintain children in a safe and nurturing home environment, and should enable treatment decisions to be made in response to clinical needs in accordance with sound professional judgment while also recognizing parents' rights to participate in treatment decisions for their children;

(2) Accountability of services through state-wide standards for monitoring and reporting of information;

(3) Minimum service delivery standards;

(4) Priorities for the use of available resources for the care of the mentally ill;

(5) Coordination of services within the department, including those divisions within the department that provide services to children, between the department and the office of the superintendent of public instruction, and among state mental hospitals, county authorities, community mental health services, and other support services, which shall to the maximum extent feasible also include the families of the mentally ill, and other service providers; and

(6) Coordination of services aimed at reducing duplication in service delivery and promoting complementary services among all entities that provide mental health services to adults and children.

It is the policy of the state to encourage the provision of a full range of treatment and rehabilitation services in the state for mental disorders. The legislature intends to encourage the development of county-based and county-managed mental health services with adequate local flexibility to assure eligible people in need of care access to the least-restrictive treatment alternative appropriate

to their needs, and the availability of treatment components to assure continuity of care. To this end, counties are encouraged to enter into joint operating agreements with other counties to form regional systems of care which integrate planning, administration, and service delivery duties assigned to counties under chapters 71.05 and 71.24 RCW to consolidate administration, reduce administrative layering, and reduce administrative costs.

It is further the intent of the legislature to integrate the provision of services to provide continuity of care through all phases of treatment. To this end the legislature intends to promote active engagement with mentally ill persons and collaboration between families and service providers. [1991 c 306 § 1; 1989 c 205 § 1; 1986 c 274 § 1; 1982 c 204 § 2.]

Conflict with federal requirements—1991 c 306: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

However, if any part of this act conflicts with such federal requirements, the state appropriation for mental health services provided to children whose mental disorders are discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment program shall be provided through the division of medical assistance and no state funds appropriated to the division of mental health shall be expended or transferred for this purpose." [1991 c 306 § 7.]

Evaluation of transition to regional systems—1989 c 205: "(1) In order to determine the effectiveness of this act, it is necessary to have an independent evaluation of the transition to regional systems of care. The legislative budget committee shall prepare a plan to conduct a study of the effectiveness of the change in the mental health system initiated by this act. The primary goal of the study is to evaluate the progress of the regional support networks in meeting the statutory requirement of this act to serve at least eighty-five percent of the short-term commitments within their boundaries by July 1, 1993. A plan for study shall include, but is not limited to, the following considerations:

(a) Progress in implementing and complying with the intention of this act to create regional support networks;

(b) Effect on short-term commitments to the state hospitals;

(c) Effect on residential options in the community;

(d) Effect on delivery of services, both residential and nonresidential, in the community; and

(e) Effect on continuity of services to the mentally ill.

(2) The plan for conducting a study, including start and completion dates, general research approaches, potential research problems, data requirements, necessary implementation authority, and cost estimates is to be provided to the appropriate policy and fiscal committees of the house of representatives and the senate by December 1, 1990. The plan may include proposals to use contract evaluators or other options for determining the most appropriate entity to complete the study, and shall identify ways to measure program progress and outcomes. The plan shall take into consideration a study completion date of December 1, 1992.

(3) In order to establish a beginning point for any future study of the effectiveness of the system changes initiated in this act, when the biennial contract is signed by the department of social and health services and a regional support network, the department shall forward a copy of the contract to the legislative budget committee." [1989 c 205 § 23.]

Effective date—1986 c 274 §§ 1, 2, 3, 5, 9: "Sections 1, 2, 3, 5, and 9 of this act shall take effect on July 1, 1987." [1986 c 274 § 11.] Sections 1, 2, 3, 5, and 9 are the amendments by 1986 c 274 to RCW 71.24.015, 71.24.025, 71.24.035, 71.24.045, and 71.24.155, respectively.

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

(1) "Acutely mentally ill" means a condition which is limited to a short-term severe crisis episode of:

(a) A mental disorder as defined in RCW 71.05.020(2) or, in the case of a child, as defined in RCW 71.34.020(12);

(b) Being gravely disabled as defined in RCW 71.05.020(1) or, in the case of a child, as defined in RCW 71.34.020(8); or

(c) Presenting a likelihood of serious harm as defined in RCW 71.05.020(3) or, in the case of a child, as defined in RCW 71.34.020(11).

(2) "Available resources" means those funds which shall be appropriated under this chapter by the legislature during any biennium for the purpose of providing community mental health programs under RCW 71.24-.045. When regional support networks are established or after July 1, 1995, "available resources" means federal funds, except those provided according to Title XIX of the social security act, and state funds appropriated under this chapter or chapter 71.05 RCW by the legislature during any biennium for the purpose of providing residential services, resource management services, community support services, and other mental health services. This does not include funds appropriated for the purpose of operating and administering the state psychiatric hospitals, except as negotiated according to RCW 71.24.300(1)(d).

(3) "Licensed service provider" means an entity licensed according to this chapter or chapter 71.05 RCW that meets state minimum standards or individuals licensed under chapter 18.57, 18.71, 18.83, or 18.88 RCW.

(4) "Child" means a person under the age of eighteen years.

(5) "Chronically mentally ill adult" means an adult who has a mental disorder and meets at least one of the following criteria:

(a) Has undergone two or more episodes of hospital care for a mental disorder within the preceding two years; or

(b) Has experienced a continuous psychiatric hospitalization or residential treatment exceeding six months' duration within the preceding year; or

(c) Has been unable to engage in any substantial gainful activity by reason of any mental disorder which has lasted for a continuous period of not less than twelve months. "Substantial gainful activity" shall be defined by the department by rule consistent with Public Law 92-603, as amended.

(6) "Severely emotionally disturbed child" means an infant or child who has been determined by the regional support network to be experiencing a mental disorder as defined in chapter 71.34 RCW, including those mental disorders that result in a behavioral or conduct disorder, that is clearly interfering with the child's functioning in family or school or with peers and who meets at least one of the following criteria:

(a) Has undergone inpatient treatment or placement outside of the home related to a mental disorder within the last two years;

(b) Has undergone involuntary treatment under chapter 71.34 RCW within the last two years;

(c) Is currently served by at least one of the following child-serving systems: Juvenile justice, child-protection/welfare, special education, or developmental disabilities;

(d) Is at risk of escalating maladjustment due to:

(i) Chronic family dysfunction involving a mentally ill or inadequate caretaker;

(ii) Changes in custodial adult;

(iii) Going to, residing in, or returning from any placement outside of the home, for example, psychiatric hospital, short-term inpatient, residential treatment, group or foster home, or a correctional facility;

(iv) Subject to repeated physical abuse or neglect;

(v) Drug or alcohol abuse; or

(vi) Homelessness.

(7) "Community mental health program" means all mental health services established by a county authority. After July 1, 1995, or when the regional support networks are established, "community mental health program" means all activities or programs using available resources.

(8) "Community support services" means services for acutely mentally ill persons, chronically mentally ill adults, and severely emotionally disturbed children and includes: (a) Discharge planning for clients leaving state mental hospitals, other acute care inpatient facilities, inpatient psychiatric facilities for persons under twenty-one years of age, and other children's mental health residential treatment facilities; (b) sufficient contacts with clients, families, schools, or significant others to provide for an effective program of community maintenance; and (c) medication monitoring. After July 1, 1995, or when regional support networks are established, for adults and children "community support services" means services authorized, planned, and coordinated through resource management services including, at least, assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week, prescreening determinations for mentally ill persons being considered for placement in nursing homes as required by federal law, screening for patients being considered for admission to residential services, diagnosis and treatment for acutely mentally ill and severely emotionally disturbed children discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment program, investigation, legal, and other non-residential services under chapter 71.05 RCW, case management services, psychiatric treatment including medication supervision, counseling, psychotherapy, assuring transfer of relevant patient information between service providers, other services determined by regional support networks, and maintenance of a patient tracking system for chronically mentally ill adults and severely emotionally disturbed children.

(9) "County authority" means the board of county commissioners, county council, or county executive having authority to establish a community mental health program, or two or more of the county authorities specified in this subsection which have entered into an agreement to provide a community mental health program.

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

(11) "Mental health services" means community services pursuant to RCW 71.24.035(5)(b) and other services provided by the state for the mentally ill. When regional support networks are established, or after July 1, 1995, "mental health services" shall include all services provided by regional support networks.

(12) "Mentally ill persons" and "the mentally ill" mean persons and conditions defined in subsections (1), (5), (6), and (16) of this section.

(13) "Regional support network" means a county authority or group of county authorities recognized by the secretary that enter into joint operating agreements to contract with the secretary pursuant to this chapter.

(14) "Residential services" means a facility or distinct part thereof which provides food and shelter, and may include treatment services.

When regional support networks are established, or after July 1, 1995, for adults and children "residential services" means a complete range of residences and supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for acutely mentally ill persons, chronically mentally ill adults, severely emotionally disturbed children, or seriously disturbed adults determined by the regional support network to be at risk of becoming acutely or chronically mentally ill. The services shall include at least evaluation and treatment services as defined in chapter 71.05 RCW, acute crisis respite care, long-term adaptive and rehabilitative care, and supervised and supported living services, and shall also include any residential services developed to service mentally ill persons in nursing homes. Residential services for children in out-of-home placements related to their mental disorder shall not include the costs of food and shelter, except for children's long-term residential facilities existing prior to January 1, 1991.

(15) "Resource management services" mean the planning, coordination, and authorization of residential services and community support services administered pursuant to an individual service plan for acutely mentally ill adults and children, chronically mentally ill adults, severely emotionally disturbed children, or seriously disturbed adults determined by the regional support network at their sole discretion to be at risk of becoming acutely or chronically mentally ill. Such planning, coordination, and authorization shall include mental health screening for children eligible under the federal Title XIX early and periodic screening, diagnosis, and treatment program. Resource management services include seven day a week, twenty-four hour a day

availability of information regarding mentally ill adults' and children's enrollment in services and their individual service plan to county-designated mental health professionals, evaluation and treatment facilities, and others as determined by the regional support network.

(16) "Seriously disturbed person" means a person who:

(a) Is gravely disabled or presents a likelihood of serious harm to oneself or others as a result of a mental disorder as defined in chapter 71.05 RCW;

(b) Has been on conditional release status at some time during the preceding two years from an evaluation and treatment facility or a state mental health hospital;

(c) Has a mental disorder which causes major impairment in several areas of daily living;

(d) Exhibits suicidal preoccupation or attempts; or

(e) Is a child diagnosed by a mental health professional, as defined in RCW 71.05.020, as experiencing a mental disorder which is clearly interfering with the child's functioning in family or school or with peers or is clearly interfering with the child's personality development and learning.

(17) "Secretary" means the secretary of social and health services.

(18) "State minimum standards" means: (a) Minimum requirements for delivery of mental health services as established by departmental rules and necessary to implement this chapter, including but not limited to licensing service providers and services; (b) minimum service requirements for licensed service providers for the provision of mental health services as established by departmental rules pursuant to chapter 34.05 RCW as necessary to implement this chapter, including, but not limited to: Qualifications for staff providing services directly to mentally ill persons; the intended result of each service; and the rights and responsibilities of persons receiving mental health services pursuant to this chapter; (c) minimum requirements for residential services as established by the department in rule based on clients' functional abilities and not solely on their diagnoses, limited to health and safety, staff qualifications, and program outcomes. Minimum requirements for residential services are those developed in collaboration with consumers, families, counties, regulators, and residential providers serving the mentally ill. Minimum requirements encourage the development of broad-range residential programs, including integrated housing and cross-systems programs where appropriate, and do not unnecessarily restrict programming flexibility; and (d) minimum standards for community support services and resource management services, including at least qualifications for resource management services, client tracking systems, and the transfer of patient information between service providers. [1991 c 306 § 2; 1989 c 205 § 2; 1986 c 274 § 2; 1982 c 204 § 3.]

Conflict with federal requirements—1991 c 306: See note following RCW 71.24.015.

Effective date—1986 c 274 §§ 1, 2, 3, 5, 9: See note following RCW 71.24.015.

71.24.035 Secretary's powers and duties as state mental health authority, county authority. (1) The department is designated as the state mental health authority.

(2) The secretary may provide for public, client, and licensed service provider participation in developing the state mental health program.

(3) The secretary shall provide for participation in developing the state mental health program for children and other underserved populations, by including representatives on any committee established to provide oversight to the state mental health program.

(4) The secretary shall be designated as the county authority if a county fails to meet state minimum standards or refuses to exercise responsibilities under RCW 71.24.045.

(5) The secretary shall:

(a) Develop a biennial state mental health program that incorporates county biennial needs assessments and county mental health service plans and state services for mentally ill adults and children. The secretary may also develop a six-year state mental health plan;

(b) Assure that any county community mental health program provides access to treatment for the county's residents in the following order of priority: (i) The acutely mentally ill; (ii) chronically mentally ill adults and severely emotionally disturbed children; and (iii) the seriously disturbed. Such programs shall provide:

(A) Outpatient services;

(B) Emergency care services for twenty-four hours per day;

(C) Day treatment for mentally ill persons which includes training in basic living and social skills, supported work, vocational rehabilitation, and day activities. Such services may include therapeutic treatment. In the case of a child, day treatment includes age-appropriate basic living and social skills, educational and prevocational services, day activities, and therapeutic treatment;

(D) Screening for patients being considered for admission to state mental health facilities to determine the appropriateness of admission;

(E) Employment services, which may include supported employment, transitional work, placement in competitive employment, and other work-related services, that result in mentally ill persons becoming engaged in meaningful and gainful full or part-time work. Other sources of funding such as the division of vocational rehabilitation may be utilized by the secretary to maximize federal funding and provide for integration of services;

(F) Consultation and education services; and

(G) Community support services;

(c) Develop and promulgate rules establishing state minimum standards for the delivery of mental health services including, but not limited to:

(i) Licensed service providers;

(ii) Regional support networks; and

(iii) Residential and inpatient services, evaluation and treatment services and facilities under chapter 71.05 RCW, resource management services, and community support services;

(d) Assure that the special needs of minorities, the elderly, disabled, children, and low-income persons are met within the priorities established in this section;

(e) Establish a standard contract or contracts, consistent with state minimum standards, which shall be used by the counties;

(f) Establish, to the extent possible, a standardized auditing procedure which minimizes paperwork requirements of county authorities and licensed service providers;

(g) Develop and maintain an information system to be used by the state, counties, and regional support networks when they are established which shall include a tracking method which allows the department and regional support networks to identify mental health clients' participation in any mental health service or public program on an immediate basis. The information system shall not include individual patient's case history files. Confidentiality of client information and records shall be maintained as provided in this chapter and in RCW 71.05.390, 71.05.400, 71.05.410, 71.05.420, 71.05.430, and 71.05.440. The system shall be fully operational no later than January 1, 1993: PROVIDED, HOWEVER, That when a regional support network is established, the department shall have an operational interim tracking system for that network that will be adequate for the regional support network to perform its required duties under this chapter;

(h) License service providers who meet state minimum standards;

(i) Certify regional support networks that meet state minimum standards;

(j) Periodically inspect certified regional support networks and licensed service providers at reasonable times and in a reasonable manner; and

(k) Fix fees to be paid by evaluation and treatment centers to the secretary for the required inspections;

(l) Monitor and audit counties, regional support networks, and licensed service providers as needed to assure compliance with contractual agreements authorized by this chapter;

(m) Prior to September 1, 1989, adopt such rules as are necessary to implement the department's responsibilities under this chapter pursuant to chapter 34.05 RCW: PROVIDED, That such rules shall be submitted to the appropriate committees of the legislature for review and comment prior to adoption; and

(n) Beginning July 1, 1989, and continuing through July 1, 1993, track by region and county the use and cost of state hospital and local evaluation and treatment facilities for seventy-two hour detention, fourteen, ninety, and one hundred eighty day commitments pursuant to chapter 71.05 RCW, voluntary care in state hospitals, and voluntary community inpatient care covered by the medical assistance program. Service use and cost reports shall be provided to regions in a timely fashion at six-month intervals.

(6) The secretary shall use available resources appropriated specifically for community mental health programs only for programs under RCW 71.24.045. After

July 1, 1995, or when regional support networks are established, available resources may be used only for regional support networks.

(7) Each certified regional support network and licensed service provider shall file with the secretary, on request, such data, statistics, schedules, and information as the secretary reasonably requires. A certified regional support network or licensed service provider which, without good cause, fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent reports thereof, may have its certification or license revoked or suspended.

(8) The secretary may suspend, revoke, limit, or restrict a certification or license, or refuse to grant a certification or license for failure to conform to the law, applicable rules and regulations, or applicable standards, or failure to meet the minimum standards established pursuant to this section.

(9) The superior court may restrain any regional support network or service provider from operating without certification or a license or any other violation of this section. The court may also review, pursuant to procedures contained in chapter 34.05 RCW, any denial, suspension, limitation, restriction, or revocation of certification or license, and grant other relief required to enforce the provisions of this chapter.

(10) Upon petition by the secretary, and after hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the secretary authorizing him or her to enter at reasonable times, and examine the records, books, and accounts of any regional support network or service provider refusing to consent to inspection or examination by the authority.

(11) The secretary shall adopt such rules as may be necessary to effectuate the intent and purposes of this chapter, which shall include but not be limited to certification and licensing and other action relevant to certifying regional support networks and licensing service providers.

(12) Notwithstanding the existence or pursuit of any other remedy, the secretary may, in the manner provided by law, upon the advice of the attorney general who shall represent the secretary 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 regional support network or service provider without certification or a license under this chapter.

(13) 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 chapter 71.05 RCW, and shall otherwise assure the effectuation of the purposes and intent of this chapter and chapter 71.05 RCW.

(14)(a) The department, in consultation with affected parties, shall establish a distribution formula that reflects county needs assessments based on the number of persons who are acutely mentally ill, chronically mentally ill, severely emotionally disturbed, and seriously

disturbed as defined in chapter 71.24 RCW. The formula shall take into consideration the impact on counties of demographic factors in counties which result in concentrations of priority populations as defined in subsection (15) of this section. These factors shall include the population concentrations resulting from commitments under the involuntary treatment act, chapter 71.05 RCW, to state psychiatric hospitals, as well as concentration in urban areas, at border crossings at state boundaries, and other significant demographic and workload factors.

(b) The department shall submit a proposed distribution formula in accordance with this section to the ways and means and health and long-term care committees of the senate and to the ways and means and human services committees of the house of representatives by October 1, 1991. The formula shall also include a projection of the funding allocations that will result for each county, which specifies allocations according to priority populations, including the allocation for services to children and other underserved populations.

(15) To supersede duties assigned under subsection (5) (a) and (b) of this section, and to assure a county-based, integrated system of care for acutely mentally ill adults and children, chronically mentally ill adults, severely emotionally disturbed children, and seriously disturbed adults and children who are determined by regional support networks at their sole discretion to be at risk of becoming acutely or chronically mentally ill, or severely emotionally disturbed, the secretary shall encourage the development of regional support networks as follows:

By December 1, 1989, the secretary shall recognize regional support networks requested by counties or groups of counties.

All counties wishing to be recognized as a regional support network on December 1, 1989, shall submit their intentions regarding participation in the regional support networks by October 30, 1989, along with preliminary plans. Counties wishing to be recognized as a regional support network by January 1 of any year thereafter shall submit their intentions by October 30 of the previous year along with preliminary plans. The secretary shall assume all duties assigned to the nonparticipating counties under chapters 71.05 and 71.24 RCW on July 1, 1995. Such responsibilities shall include those which would have been assigned to the nonparticipating counties under regional support networks.

The implementation of regional support networks, or the secretary's assumption of all responsibilities under chapters 71.05 and 71.24 RCW, shall be included in all state and federal plans affecting the state mental health program including at least those required by this chapter, the medicaid program, and P.L. 99-660. Nothing in these plans shall be inconsistent with the intent and requirements of this chapter.

(16) By January 1, 1992, the secretary shall provide available resources to regional support networks to operate freestanding evaluation and treatment facilities or

for regional support networks to contract with local hospitals to assure access for regional support network patients.

(17) The secretary shall:

(a) Disburse the first funds for the regional support networks that are ready to begin implementation by January 1, 1990, or within sixty days of approval of the biennial contract. The department must either approve or reject the biennial contract within sixty days of receipt.

(b) Enter into biennial contracts with regional support networks to begin implementation between January 1, 1990, and March 1, 1990, and complete implementation by June 1995. The contracts shall be consistent with available resources. No contract shall be approved that does not include progress toward meeting the goals of this chapter by taking responsibility for: (i) Short-term commitments; (ii) residential care; and (iii) emergency response systems.

(c) By July 1, 1993, allocate one hundred percent of available resources to regional support networks created by January 1, 1990, in a single grant. Regional support networks created by January 1, 1991, shall receive a single block grant by July 1, 1993; regional support networks created by January 1, 1992, shall receive a single block grant by July 1, 1994; and regional support networks created by January 1, 1993, shall receive a single block grant by July 1, 1995. The grants shall include funds currently provided for all residential services, all services pursuant to chapter 71.05 RCW, and all community support services and shall be distributed in accordance with a formula submitted to the legislature by January 1, 1993, in accordance with subsection (14) of this section.

(d) By January 1, 1990, allocate available resources to regional support networks for community support services, resource management services, and residential services excluding evaluation and treatment facilities provided pursuant to chapter 71.05 RCW in a single grant using the distribution formula established in subsection (14) of this section.

(e) By March 1, 1990, or within sixty days of approval of the contract continuing through July 1, 1993, provide grants as specifically appropriated by the legislature to regional support networks for evaluation and treatment facilities for persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW. For regional support networks created by January 1, 1993, provide grants as specifically appropriated by the legislature to regional support networks for evaluation and treatment facilities for persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW through July 1, 1995.

(f) Notify regional support networks of their allocation of available resources at least sixty days prior to the start of a new biennial contract period.

(g) Deny funding allocations to regional support networks based solely upon formal findings of noncompliance with the terms of the regional support network's contract with the department. Written notice and at least thirty days for corrective action must precede any

such action. In such cases, regional support networks shall have full rights to appeal under chapter 34.05 RCW.

(h) Identify in its departmental biennial operating and capital budget requests the funds requested by regional support networks to implement their responsibilities under this chapter.

(i) Contract to provide or, if requested, make grants to counties to provide technical assistance to county authorities or groups of county authorities to develop regional support networks.

(18) The department of social and health services, in cooperation with the state congressional delegation, shall actively seek waivers of federal requirements and such modifications of federal regulations as are necessary to allow federal medicaid reimbursement for services provided by free-standing evaluation and treatment facilities certified under chapter 71.05 RCW. The department shall periodically report its efforts to the health care and corrections committee of the senate and the human services committee of the house of representatives.

(19) The secretary shall establish a task force to examine the recruitment, training, and compensation of qualified mental health professionals in the community, which shall include the advantages and disadvantages of establishing a training academy, loan forgiveness program, or educational stipends offered in exchange for commitments of employment in mental health. The task force shall report back to the appropriate committees of the legislature by January 1, 1990. [1991 c 306 § 3; 1991 c 262 § 1; 1991 c 29 § 1; 1990 1st ex.s. c 8 § 1; 1989 c 205 § 3; 1987 c 105 § 1; 1986 c 274 § 3; 1982 c 204 § 4.]

Reviser's note: This section was amended by 1991 c 29 § 1, 1991 c 262 § 1, and by 1991 c 306 § 3, each without reference to the other. All Amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Conflict with federal requirements—1991 c 306: See note following RCW 71.24.015.

Effective date—1987 c 105: "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 July 1, 1987." [1987 c 105 § 2.]

Effective date—1986 c 274 §§ 1, 2, 3, 5, 9: See note following RCW 71.24.015.

71.24.045 County authority powers and duties. The county authority shall:

(1) Submit biennial needs assessments beginning January 1, 1983, and mental health service plans which incorporate all services provided for by the county authority consistent with state minimum standards and which provide access to treatment for the county's residents including children and other underserved populations who are acutely mentally ill, chronically mentally ill, severely emotionally disturbed, or seriously disturbed. The county program shall provide:

(a) Outpatient services;

(b) Emergency care services for twenty-four hours per day;

(c) Day treatment for mentally ill persons which includes training in basic living and social skills, supported work, vocational rehabilitation, and day activities. Such services may include therapeutic treatment. In the case of a child, day treatment includes age-appropriate basic living and social skills, educational and prevocational services, day activities, and therapeutic treatment;

(d) Screening for patients being considered for admission to state mental health facilities to determine appropriateness of admission;

(e) Employment services, which may include supported employment, transitional work, placement in competitive employment, and other work-related services, that result in mentally ill persons becoming engaged in meaningful and gainful full or part-time work;

(f) Consultation and education services;

(g) Residential and inpatient services, if the county chooses to provide such optional services; and

(h) Community support services.

The county shall develop the biennial needs assessment based on clients to be served, services to be provided, and the cost of those services, and may include input from the public, clients, and licensed service providers. Each county authority may appoint a county mental health advisory board which shall review and provide comments on plans and policies developed by the county authority under this chapter. The composition of the board shall be broadly representative of the demographic character of the county and the mentally ill persons served therein. Length of terms of board members shall be determined by the county authority;

(2) Contract as needed with licensed service providers. The county authority may, in the absence of a licensed service provider entity, become a licensed service provider entity pursuant to minimum standards required for licensing by the department for the purpose of providing services not available from licensed service providers;

(3) Operate as a licensed service provider if it deems that doing so is more efficient and cost effective than contracting for services. When doing so, the county authority shall comply with rules promulgated by the secretary that shall provide measurements to determine when a county provided service is more efficient and cost effective;

(4) Monitor and perform biennial fiscal audits of licensed service providers who have contracted with the county to provide services required by this chapter. The monitoring and audits shall be performed by means of a formal process which insures that the licensed service providers and professionals designated in this subsection meet the terms of their contracts, including the minimum standards of service delivery as established by the department;

(5) Assure that the special needs of minorities, the elderly, disabled, children, and low-income persons are met within the priorities established in this chapter;

(6) Maintain patient tracking information in a central location as required for resource management services;

(7) Use not more than two percent of state-appropriated community mental health funds, which shall not include federal funds, to administer community mental

health programs under RCW 71.24.155: PROVIDED, That county authorities serving a county or combination of counties whose population is one hundred twenty-five thousand or more may be entitled to sufficient state-appropriated community mental health funds to employ up to one full-time employee or the equivalent thereof in addition to the two percent limit established in this subsection when such employee is providing staff services to a county mental health advisory board;

(8) Coordinate services for individuals who have received services through the community mental health system and who become patients at a state mental hospital. [1991 c 363 § 147; 1991 c 306 § 5; 1991 c 29 § 2; 1989 c 205 § 4; 1986 c 274 § 5; 1982 c 204 § 5.]

Reviser's note: This section was amended by 1991 c 306 § 5 and by 1991 c 363 § 147, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

Conflict with federal requirements—1991 c 306: See note following RCW 71.24.015.

Effective date—1986 c 274 §§ 1, 2, 3, 5, 9: See note following RCW 71.24.015.

71.24.300 Regional support networks—Generally.

A county authority or a group of county authorities whose combined population is no less than forty thousand may enter into a joint operating agreement to form a regional support network. The roles and responsibilities of county authorities shall be determined by the terms of that agreement and the provisions of law. The state mental health authority may not determine the roles and responsibilities of county authorities as to each other under regional support networks by rule, except to assure that all duties required of regional support networks are assigned and that a single authority has final responsibility for all available resources and performance under the regional support network's contract with the secretary.

(1) Regional support networks shall within three months of recognition submit an overall six-year operating and capital plan, timeline, and budget and submit progress reports and an updated two-year plan biennially thereafter, to assume within available resources all of the following duties by July 1, 1995, instead of those presently assigned to counties under RCW 71.24.045(1):

(a) Administer and provide for the availability of all resource management services, residential services, and community support services.

(b) Administer and provide for the availability of all investigation, transportation, court-related, and other services provided by the state or counties pursuant to chapter 71.05 RCW.

(c) By July 1, 1993, provide within the boundaries of each regional support network evaluation and treatment services for at least eighty-five percent of persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW. Regional support networks with populations of less than one hundred fifty thousand may contract to purchase evaluation and treatment services from other networks. For regional

support networks that are created after June 30, 1991, the requirements of (c) of this subsection must be met by July 1, 1995.

(d) By July 1, 1993, administer a portion of funds appropriated by the legislature to house mentally ill persons in state institutions from counties within the boundaries of any regional support network, with the exception of mentally ill offenders, and provide for the care of all persons needing evaluation and treatment services for periods up to seventeen days according to chapter 71.05 RCW in appropriate residential services, which may include state institutions. The regional support networks shall reimburse the state for use of state institutions at a rate equal to that assumed by the legislature when appropriating funds for such care at state institutions during the biennium when reimbursement occurs. The duty of a state hospital to accept persons for evaluation and treatment under chapter 71.05 RCW is limited by the responsibilities assigned to regional support networks under this section. For regional support networks that are created after June 30, 1991, the requirements of (d) of this subsection must be met by July 1, 1995.

(e) Administer and provide for the availability of all other mental health services, which shall include patient counseling, day treatment, consultation, education services, employment services as defined in RCW 71.24.035, and mental health services to children as provided in this chapter.

(f) Establish standards and procedures for reviewing individual service plans and determining when that person may be discharged from resource management services.

(2) Regional support networks shall assume all duties assigned to county authorities by this chapter and chapter 71.05 RCW.

(3) A regional support network may request that any state-owned land, building, facility, or other capital asset which was ever purchased, deeded, given, or placed in trust for the care of the mentally ill and which is within the boundaries of a regional support network be made available to support the operations of the regional support network. State agencies managing such capital assets shall give first priority to requests for their use pursuant to this chapter.

(4) Each regional support network shall appoint a mental health advisory board which shall review and provide comments on plans and policies developed under this chapter. The composition of the board shall be broadly representative of the demographic character of the region and the mentally ill persons served therein. Length of terms of board members shall be determined by the regional support network.

(5) Regional support networks shall assume all duties specified in their plans and joint operating agreements through biennial contractual agreements with the secretary. Such contracts may include agreements to provide periods of stable community living and work or other day activities for specific chronically mentally ill persons who have completed commitments at state hospitals on

ninety-day or one hundred eighty-day civil commitments or who have been residents at state hospitals for no less than one hundred eighty days within the previous year. Periods of stable community living may involve acute care in local evaluation and treatment facilities but may not involve use of state hospitals.

(6) Counties or groups of counties participating in a regional support network are not subject to RCW 71.24.045(7). The office of financial management shall consider information gathered in studies required in this chapter and information about the experience of other states to propose a mental health services administrative cost lid to the 1991 legislature which shall include administrative costs of licensed service providers, the state psychiatric hospitals and the department.

(7) The first regional support network contract may include a pilot project to: Establish standards and procedures for (a) making referrals for comprehensive medical examinations and treatment programs for those whose mental illness is caused or exacerbated by organic disease, and (b) training staff in recognizing the relationship between mental illness and organic disease.

(8) By November 1, 1991, and as part of each biennial plan thereafter, each regional support network shall establish and submit to the state, procedures and agreements to assure access to sufficient additional local evaluation and treatment facilities to meet the requirements of this chapter while reducing short-term admissions to state hospitals. These shall be commitments to construct and operate, or contract for the operation of, freestanding evaluation and treatment facilities or agreements with local evaluation and treatment facilities which shall include (a) required admission and treatment for short-term inpatient care for any person enrolled in community support or residential services, (b) discharge planning procedures, (c) limitations on admissions or transfers to state hospitals, (d) adequate psychiatric supervision, (e) prospective payment methods, and (f) contractual assurances regarding referrals to local evaluation and treatment facilities from regional support networks.

(9) Regional support networks may receive technical assistance from the housing trust fund and may identify and submit projects for housing and housing support services to the housing trust fund established under chapter 43.185 RCW. Projects identified or submitted under this subsection must be fully integrated with the regional support network six-year operating and capital plan, timeline, and budget required by subsection (1) of this section. [1991 c 295 § 3; 1991 c 262 § 2; 1991 c 29 § 3; 1989 c 205 § 5.]

Reviser's note: This section was amended by 1991 c 29 § 3, 1991 c 262 § 2, and by 1991 c 295 § 3, each without reference to the other. All amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

71.24.800 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 71.34

MENTAL HEALTH SERVICES FOR MINORS

Sections

71.34.060 Examination and evaluation of minor approved for inpatient admission—Referral to chemical dependency treatment program—Right to communication, exception—Evaluation and treatment period.

71.34.060 Examination and evaluation of minor approved for inpatient admission—Referral to chemical dependency treatment program—Right to communication, exception—Evaluation and treatment period. (1) Each minor approved by the facility for inpatient admission shall be examined and evaluated by a children's mental health specialist as to the child's mental condition and by a physician as to the child's physical condition within twenty-four hours of admission. Reasonable measures shall be taken to ensure medical treatment is provided for any condition requiring immediate medical attention.

(2) If, after examination and evaluation, the children's mental health specialist and the physician determine that the initial needs of the minor would be better served by placement in a chemical dependency treatment facility, then the minor shall be referred to an approved treatment program defined under RCW 70.96A.020.

(3) The admitting facility shall take reasonable steps to notify immediately the minor's parent of the admission.

(4) During the initial seventy-two hour treatment period, the minor has a right to associate or receive communications from parents or others unless the professional person in charge determines that such communication would be seriously detrimental to the minor's condition or treatment and so indicates in the minor's clinical record, and notifies the minor's parents of this determination. In no event may the minor be denied the opportunity to consult an attorney.

(5) If the evaluation and treatment facility admits the minor, it may detain the minor for evaluation and treatment for a period not to exceed seventy-two hours from the time of provisional acceptance. The computation of such seventy-two hour period shall exclude Saturdays, Sundays, and holidays. This initial treatment period shall not exceed seventy-two hours except when an application for voluntary inpatient treatment is received or a petition for fourteen-day commitment is filed.

(6) Within twelve hours of the admission, the facility shall advise the minor of his or her rights as set forth in this chapter. [1991 c 364 § 12; 1985 c 354 § 6.]

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

Chapter 71.36

COORDINATION OF CHILDREN'S MENTAL HEALTH SERVICES

Sections

71.36.005 Intent.
71.36.010 Definitions.

71.36.020 Inventory of mental health programs for children—Plan for early periodic screening, diagnosis, and treatment services.
71.36.030 Children's mental health services delivery system—Local planning efforts.
71.36.900 Part headings not law—1991 c 326.
71.36.901 Severability—1991 c 326.

71.36.005 Intent. The legislature intends to encourage the development of community-based interagency collaborative efforts to plan for and provide mental health services to children in a manner that coordinates existing categorical children's mental health programs and funding, is sensitive to the unique cultural circumstances of children of color, eliminates duplicative case management, and to the greatest extent possible, blends categorical funding to offer more service options to each child. [1991 c 326 § 11.]

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

(1) "Agency" means a state or local governmental entity or a private not-for-profit organization.

(2) "Child" means a person under eighteen years of age, except as expressly provided otherwise in federal law.

(3) "County authority" means the board of county commissioners or county executive.

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

(5) "Early periodic screening, diagnosis, and treatment" means the component of the federal medicaid program established pursuant to 42 U.S.C. Sec. 1396d(r), as amended.

(6) "Regional support network" means a county authority or group of county authorities that have entered into contracts with the secretary pursuant to chapter 71.24 RCW.

(7) "Secretary" means the secretary of social and health services. [1991 c 326 § 12.]

71.36.020 Inventory of mental health programs for children—Plan for early periodic screening, diagnosis, and treatment services. (1) The office of financial management shall provide the following information to the appropriate committees of the legislature on or before December 1, 1991, and update such information biennially thereafter:

(a) An inventory of state and federally funded programs providing mental health services to children in Washington state. For purposes of the inventory, "children's mental health services" shall be broadly construed to include services related to children's mental health provided through education, children and family services, juvenile justice, mental health, health care, alcohol and substance abuse, and developmental disabilities programs, such as: The primary intervention program; treatment foster care; the fair start program; therapeutic child care and day treatment for children in the child protective services system, as provided in RCW 74.14B-.040; family reconciliation services counseling, as provided in chapter 13.32A RCW; the community mental

health services act, as provided in chapter 71.24 RCW; mental health services for minors, as provided in chapter 71.34 RCW; mental health services provided by the medical assistance program, limited casualty program for the medically needy and children's health program, as provided in chapter 74.09 RCW; counseling for delinquent children, as provided in RCW 72.05.170; mental health service provided by child welfare services, as provided in chapter 74.13 RCW; and services to emotionally disturbed and mentally ill children, as provided in chapter 74.14A RCW.

(b) For each program or service inventoried pursuant to (a) of this subsection:

- (i) Statutory authority;
- (ii) Level and source of funding state-wide and for each county and school district in the state during the biennium ending June 30, 1991, to the extent such information is available;
- (iii) Agency administering the service state-wide and description of how administration and service delivery are organized and provided at the regional and local level;
- (iv) Programmatic or financial eligibility criteria;
- (v) Characteristics of, and number of children served state-wide and in each county and school district during the biennium ending June 30, 1991, to the extent such information is available;
- (vi) Number of children of color served, by race and nationality, and number and type of minority mental health providers, by race and nationality, in each regional support network area, to the extent such information is available; and
- (vii) Statutory changes necessary to remove categorical restrictions in the program or service, including federal statutory or regulatory changes.

(2) The office of financial management, in consultation with the department, shall develop a plan and criteria for the use of early periodic screening, diagnosis, and treatment services related to mental health that includes at least the following components:

- (a) Criteria for screening and assessment of mental illness and emotional disturbance;
- (b) Criteria for determining the appropriate level of medically necessary services a child receives, including but not limited to development of a multidisciplinary plan of care when appropriate, and prior authorization for receipt of mental health services;
- (c) Qualifications for children's mental health providers;
- (d) Other cost control mechanisms, such as managed care arrangements and prospective or capitated payments for mental health services; and
- (e) Mechanisms to ensure that federal medicaid matching funds are obtained for services inventoried pursuant to subsection (1) of this section, to the greatest extent practicable.

In developing the plan, the office of financial management shall provide an opportunity for comment by the major child-serving systems and regional support networks. The plan shall be submitted to appropriate

committees of the legislature on or before December 1, 1991. [1991 c 326 § 13.]

71.36.030 Children's mental health services delivery system—Local planning efforts. (1) On or before January 1, 1992, each regional support network, or county authority in counties that have not established a regional support network, shall initiate a local planning effort to develop a children's mental health services delivery system.

(2) Representatives of the following agencies or organizations and the following individuals shall participate in the local planning effort:

(a) Representatives of the department of social and health services in the following program areas: Children and family services, medical care, mental health, juvenile rehabilitation, alcohol and substance abuse, and developmental disabilities;

(b) The juvenile courts;

(c) The public health department or health district;

(d) The school districts;

(e) The educational service district serving schools in the county;

(f) Head start or early childhood education and assistance programs;

(g) Community action agencies; and

(h) Children's services providers, including minority mental health providers.

(3) Parents of children in need of mental health services and parents of children of color shall be invited to participate in the local planning effort.

(4) The following information shall be developed through the local planning effort and submitted to the secretary:

(a) A supplement to the county's January 1, 1991, children's mental health services report prepared pursuant to RCW 71.24.049 to include the following data:

(i) The number of children in need of mental health services in the county or counties covered by the local planning effort, including children in school and children receiving services through the department of social and health services division of children and family services, division of developmental disabilities, division of alcohol and substance abuse, and division of juvenile rehabilitation, grouped by severity of their mental illness;

(ii) The number of such children that are underserved or unserved and the types of services needed by such children; and

(iii) The supply of children's mental health specialists in the county or counties covered by the local planning effort.

(b) A children's mental health services delivery plan that includes a description of the following:

(i) Children that will be served, giving consideration to children who are at significant risk of experiencing mental illness, as well as those already experiencing mental illness;

(ii) How appropriate services needed by children served through the plan will be identified and provided, including prevention and identification services;

(iii) How a lead case manager for each child will be identified;

(iv) How funding for existing services will be coordinated to create more flexibility in meeting children's needs. Such funding shall include the services and programs inventoried pursuant to RCW 71.36.020(1);

(v) How the children's mental health delivery system will incorporate the elements of the early periodic screening, diagnosis, and treatment services plan developed pursuant to RCW 71.36.020(2); and

(vi) How the children's mental health delivery system will coordinate with the regional support network information system developed pursuant to RCW 71.24.035(5)(g).

(5) In developing the children's mental health services delivery plan, every effort shall be made to reduce duplication in service delivery and promote complementary services among all entities that provide children's services related to mental health.

(6) The children's mental health services delivery plan shall address the needs of children of color through at least the following mechanisms:

(a) Outreach initiatives, services, and modes of service delivery that meet the unique needs of children of color; and

(b) Services to children of color that are culturally relevant and acceptable, as well as linguistically accessible. [1991 c 326 § 14.]

71.36.900 Part headings not law—1991 c 326. Part headings used in this act do not constitute any part of the law. [1991 c 326 § 17.]

71.36.901 Severability—1991 c 326. 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. [1991 c 326 § 19.]

Title 71A

DEVELOPMENTAL DISABILITIES

Chapters

71A.10 General provisions.

71A.20 Residential habilitation centers.

Chapter 71A.10

GENERAL PROVISIONS

Sections

71A.10.080 Governor to designate an agency to implement a program for protection and advocacy of the rights of persons with developmental disabilities and mentally ill persons—Authority of designated agency—Liaison with state agencies.

71A.10.080 Governor to designate an agency to implement a program for protection and advocacy of the rights of persons with developmental disabilities and

mentally ill persons—Authority of designated agency—Liaison with state agencies. (1) The governor shall designate an agency to implement a program for the protection and advocacy of the rights of persons with developmental disabilities pursuant to the developmentally disabled assistance and bill of rights act, 89 Stat. 486; 42 U.S.C. Secs. 6000–6083 (1975), (as amended). The designated agency shall have the authority to pursue legal, administrative, and other appropriate remedies to protect the rights of the developmentally disabled and to investigate allegations of abuse and neglect. The designated agency shall be independent of any state agency that provides treatment or services other than advocacy services to persons with developmental disabilities.

(2) The agency designated under subsection (1) of this section shall implement a program for the protection and advocacy of the rights of mentally ill persons pursuant to the protection and advocacy for mentally ill individuals act of 1986, 100 Stat. 478; 42 U.S.C. Secs. 10801–10851 (1986), (as amended). The designated agency shall have the authority to pursue legal, administrative, and other appropriate remedies to protect the rights of mentally ill persons and to investigate allegations of abuse or neglect of mentally ill persons. The designated agency shall be independent of any state agency that provides treatment or services other than advocacy services to mentally ill persons.

(3) The governor shall designate an appropriate state official to serve as liaison between the agency designated to implement the protection and advocacy programs and the state departments and agencies that provide services to persons with developmental disabilities and mentally ill persons. [1991 c 333 § 1.]

Chapter 71A.20

RESIDENTIAL HABILITATION CENTERS

Sections

71A.20.050 Superintendents—Secretary's custody of residents.
71A.20.070 Educational programs.

71A.20.050 Superintendents—Secretary's custody of residents. (1) The secretary shall appoint a superintendent for each residential habilitation center. The superintendent of a residential habilitation center shall have a demonstrated history of knowledge, understanding, and compassion for the needs, treatment, and training of persons with developmental disabilities.

(2) The secretary shall have custody of all residents of the residential habilitation centers and control of the medical, educational, therapeutic, and dietetic treatment of all residents, except that the school district that conducts the program of education provided pursuant to RCW 28A.190.030 through 28A.190.050 shall have control of and joint custody of residents while they are participating in the program. The secretary shall cause surgery to be performed on any resident only upon gaining the consent of a parent, guardian, or limited guardian as authorized, except, if after reasonable effort to locate the parents, guardian, or limited guardian as

authorized, and the health of the resident is certified by the attending physician to be jeopardized unless such surgery is performed, the required consent shall not be necessary. [1990 c 33 § 589; 1988 c 176 § 705.]

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

71A.20.070 Educational programs. (1) An educational program shall be created and maintained for each residential habilitation center pursuant to RCW 28A.190.030 through 28A.190.050. The educational program shall provide a comprehensive program of academic, vocational, recreational, and other educational services best adapted to meet the needs and capabilities of each resident.

(2) The superintendent of public instruction shall assist the secretary in all feasible ways, including financial aid, so that the educational programs maintained within the residential habilitation centers are comparable to the programs advocated by the superintendent of public instruction for children with similar aptitudes in local school districts.

(3) Within available resources, the secretary 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. [1990 c 33 § 590; 1988 c 176 § 707.]

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

Title 72 STATE INSTITUTIONS

Chapters

- 72.01 Administration.
- 72.02 Adult corrections.
- 72.04A Probation and parole.
- 72.05 Children and youth services.
- 72.09 Department of corrections
(Corrections Reform Act of 1981).
- 72.20 Maple Lane school.
- 72.36 Soldiers' and veterans' homes.
- 72.40 State schools for blind, deaf, sensory
handicapped.
- 72.60 Correctional industries.
- 72.64 Labor and employment of prisoners.
- 72.72 Criminal behavior of residents of institutions.

Chapter 72.01 ADMINISTRATION

Sections

- 72.01.045 Employees—Reimbursement for costs resulting from assaults by residents, patients, or juvenile offenders.
- 72.01.200 Employment of teachers—Exceptions.

72.01.045 Employees—Reimbursement for costs resulting from assaults by residents, patients, or juvenile

offenders. (1) For purposes of this section only, "assault" means an unauthorized touching of an employee by a resident, patient, or juvenile offender resulting in physical injury to the employee.

(2) In recognition of the hazardous nature of employment in state institutions, the legislature hereby provides a supplementary program to reimburse employees of the department of social and health services and the department of veterans affairs for some of their costs attributable to their being the victims of assault by residents, patients, or juvenile offenders. This program shall be limited to the reimbursement provided in this section.

(3) An employee is only entitled to receive the reimbursement provided in this section if the secretary of social and health services or the director of the department of veterans affairs, or the secretary's or director's designee, finds that each of the following has occurred:

(a) A resident or patient has assaulted the employee and as a result thereof the employee has sustained demonstrated physical injuries which have required the employee to miss days of work;

(b) The assault cannot be attributable to any extent to the employee's negligence, misconduct, or failure to comply with any rules or conditions of employment; and

(c) The department of labor and industries has approved the employee's workers' compensation application pursuant to chapter 51.32 RCW.

(4) The reimbursement authorized under this section shall be as follows:

(a) The employee's accumulated sick leave days shall not be reduced for the workdays missed;

(b) For each workday missed for which the employee is not eligible to receive compensation under chapter 51.32 RCW, the employee shall receive full pay; and

(c) In respect to workdays missed for which the employee will receive or has received compensation under chapter 51.32 RCW, the employee shall be reimbursed in an amount which, when added to that compensation, will result in the employee receiving full pay for the workdays missed.

(5) Reimbursement under this section may not last longer than three hundred sixty-five consecutive days after the date of the injury.

(6) The employee shall not be entitled to the reimbursement provided in subsection (4) of this section for any workday for which the secretary, director, or applicable designee, finds that the employee has not diligently pursued his or her compensation remedies under chapter 51.32 RCW.

(7) The reimbursement shall only be made for absences which the secretary, director, or applicable designee believes are justified.

(8) While the employee is receiving reimbursement under this section, he or she shall continue to be classified as a state employee and the reimbursement amount shall be considered as salary or wages.

(9) All reimbursement payments required to be made to employees under this section shall be made by the employing department. The payments shall be considered as a salary or wage expense and shall be paid by the department in the same manner and from the same

appropriations as other salary and wage expenses of the department.

(10) Should the legislature revoke the reimbursement authorized under this section or repeal this section, no affected employee is entitled thereafter to receive the reimbursement as a matter of contractual right. [1990 c 153 § 1; 1987 c 102 § 1; 1986 c 269 § 4.]

72.01.200 Employment of teachers—Exceptions.

The several penal and reformatory institutions of the state may employ certificated teachers to carry on their educational work, except for the educational programs provided pursuant to RCW 28A.190.030 through 28A.190.050 and all such teachers so employed shall be eligible to membership in the state teachers' retirement fund. [1990 c 33 § 591; 1979 ex.s. c 217 § 6; 1959 c 28 § 72.01.200. Prior: 1947 c 211 § 1; Rem. Supp. 1947 § 10319-1. Formerly RCW 72.04.130.]

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

Effective date—Severability—1979 ex.s. c 217: See notes following RCW 28A.190.020.

Teachers' qualifications at state schools for the deaf and blind: RCW 72.40.028.

Teachers' retirement: Chapter 41.32 RCW.

Chapter 72.02

ADULT CORRECTIONS

Sections

72.02.180 Repealed.
72.02.190 Repealed.

72.02.180 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

72.02.190 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 72.04A

PROBATION AND PAROLE

Sections

72.04A.120 Parolee assessments.

72.04A.120 Parolee assessments. (1) Any person placed on parole shall be required to pay the monthly assessment, prescribed under subsection (2) of this section, which shall be for the duration of the parole and which shall be considered as payment or part payment of the cost of providing parole supervision to the parolee. The department may exempt a person from the payment of all or any part of the assessment based upon any of the following factors:

(a) The offender has diligently attempted but has been unable to obtain employment which provides the offender sufficient income to make such payments.

(b) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.

(c) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the department.

(d) The offender's age prevents him from obtaining employment.

(e) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship on the offender.

(f) Other extenuating circumstances as determined by the department.

(2) The department of corrections shall adopt a rule prescribing the amount of the assessment. The department may, if it finds it appropriate, prescribe a schedule of assessments which shall vary in accordance with the intensity or cost of the supervision. The department may not prescribe any assessment which is less than ten dollars nor more than fifty dollars.

(3) Payment of the assessed amount shall constitute a condition of parole for purposes of the application of RCW 72.04A.090.

(4) All amounts required to be paid under this section shall be collected by the department of corrections and deposited by the department in the dedicated fund established pursuant to RCW 72.11.040.

(5) This section shall not apply to parole services provided under an interstate compact pursuant to chapter 9.95 RCW or to parole services provided for offenders paroled before June 10, 1982. [1991 c 104 § 2; 1989 c 252 § 20; 1982 c 207 § 1.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Chapter 72.05

CHILDREN AND YOUTH SERVICES

Sections

72.05.130 Powers and duties of department—"Close security" institutions designated.

72.05.130 Powers and duties of department—"Close security" institutions designated. The department 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 department, except for the programs of education provided pursuant to RCW 28A.190.030 through 28A.190.050 which shall be established, operated and administered by the school district conducting the program, and in order to accomplish these purposes, the powers and duties of the secretary 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 governor 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 mentally and physically handicapped, and behavior problem children who may be committed or admitted to any of the institutions, schools, or facilities controlled and operated by the department, 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 secretary. 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. When the secretary determines it necessary, the secretary may create waiting lists and set priorities for use of diagnostic services for juvenile offenders on the basis of those most severely in need.

(3) The supervision of all persons committed or admitted to any institution, school, or other facility operated by the department, 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.

(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 department. 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. [1990 c 33 § 592; 1985 c 378 § 10; 1983 c 191 § 12; 1979 ex.s. c 217 § 8; 1979 c 141 § 179; 1959 c 28 § 72.05.130. Prior: 1951 c 234 § 13. Formerly RCW 43.19.370.]

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

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

Effective date—Severability—1979 ex.s. c 217: See notes following RCW 28A.190.020.

Chapter 72.09

**DEPARTMENT OF CORRECTIONS
(CORRECTIONS REFORM ACT OF 1981)**

Sections

72.09.050 Powers and duties of secretary.

- 72.09.100 Inmate work program—Types of industries, programs.
- 72.09.110 Inmates' wages—Supporting cost of corrections—Crime victims' compensation, restitution, family support.
- 72.09.260 Community service litter cleanup programs—Requirements.
- 72.09.300 Local law and justice council—Joint establishment—Local law and justice plan—Rules—Base level of services.
- 72.09.330 Sex offenders—Registration—Notice to persons convicted of sex offenses.
- 72.09.340 Supervision of sexually violent offenders—Public safety.

72.09.050 Powers and duties of secretary. The secretary shall manage the department of corrections and shall be responsible for the administration of adult correctional programs, including but not limited to the operation of all state correctional institutions or facilities used for the confinement of convicted felons. In addition, the secretary shall have broad powers to enter into agreements with any federal agency, or any other state, or any Washington state agency or local government providing for the operation of any correctional facility or program for persons convicted of felonies or misdemeanors or for juvenile offenders. Such agreements for counties with local law and justice councils shall be required in the local law and justice plan pursuant to RCW 72.09.300. The agreements may provide for joint operation or operation by the department of corrections, alone, or by any of the other governmental entities, alone. The secretary may employ persons to aid in performing the functions and duties of the department. The secretary may delegate any of his functions or duties to department employees. The secretary is authorized to promulgate standards for the department of corrections within appropriation levels authorized by the legislature.

Pursuant to the authority granted in chapter 34.05 RCW, the secretary shall adopt rules providing for inmate restitution when restitution is determined appropriate as a result of a disciplinary action. [1991 c 363 § 149; 1987 c 312 § 4; 1986 c 19 § 1; 1981 c 136 § 5.]

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

72.09.100 Inmate work program—Types of industries, programs. It is the intent of the legislature to vest in the department the power to provide for a comprehensive inmate work program and to remove statutory and other restrictions which have limited work programs in the past. For purposes of establishing such a comprehensive program, the legislature recommends that the department consider adopting any or all, or any variation of, the following classes of work programs:

(1) **CLASS I: FREE VENTURE INDUSTRIES.** The industries in this class shall be operated and managed in total or in part by any profit or nonprofit organization pursuant to an agreement between the organization and the department. The organization shall produce goods or services for sale to both the public and private sector.

The department of corrections shall supply appropriate security and custody services without charge to the participating firms.

Inmates who work in free venture industries shall do so at their own choice. They shall be paid a wage not less than sixty percent of the approximate prevailing wage within the state for the occupation, as determined by the director of the correctional industries division. If the director finds that he cannot reasonably determine the wage, then the pay shall not be less than the federal minimum wage.

(2) **CLASS II: TAX REDUCTION INDUSTRIES.** Industries in this class shall be state-owned and operated enterprises designed to reduce the costs for goods and services for tax-supported agencies and for nonprofit organizations. The industries selected for development within this class shall, as much as possible, match the available pool of inmate work skills and aptitudes with the work opportunities in the free community. The industries shall be closely patterned after private sector industries but with the objective of reducing public support costs rather than making a profit. The products and services of this industry, including purchased products and services necessary for a complete product line, may be sold to public agencies, to nonprofit organizations, and to private contractors when the goods purchased will be ultimately used by a public agency or a nonprofit organization. Clothing manufactured by an industry in this class may be donated to nonprofit organizations that provide clothing free of charge to low-income persons. Correctional industries products and services shall be reviewed by the correctional industries board of directors before offering such products and services for sale to private contractors. The board of directors shall conduct a yearly marketing review of the products and services offered under this subsection. Such review shall include an analysis of the potential impact of the proposed products and services on the Washington state business community. To avoid waste or spoilage and consequent loss to the state, when there is no public sector market for such goods, byproducts and surpluses of timber, agricultural, and animal husbandry enterprises may be sold to private persons, at private sale. Surplus by-products and surpluses of timber, agricultural and animal husbandry enterprises that cannot be sold to public agencies or to private persons may be donated to nonprofit organizations. All sales of surplus products shall be carried out in accordance with rules prescribed by the secretary.

Security and custody services shall be provided without charge by the department of corrections.

Inmates working in this class of industries shall do so at their own choice and shall be paid for their work on a gratuity scale which shall not exceed the federal minimum wage and which is approved by the director of correctional industries.

(3) **CLASS III: INSTITUTIONAL SUPPORT INDUSTRIES.** Industries in this class shall be operated by the department of corrections. They shall be designed and managed to accomplish the following objectives:

(a) Whenever possible, to provide basic work training and experience so that the inmate will be able to qualify

for better work both within correctional industries and the free community. It is not intended that an inmate's work within this class of industries should be his or her final and total work experience as an inmate.

(b) Whenever possible, to provide forty hours of work or work training per week.

(c) Whenever possible, to offset tax and other public support costs.

Supervising, management, and custody staff shall be employees of the department.

All able and eligible inmates who are assigned work and who are not working in other classes of industries shall work in this class.

Except for inmates who work in work training programs, inmates in this class shall be paid for their work in accordance with an inmate gratuity scale. The scale shall be adopted by the secretary of corrections.

(4) **CLASS IV: COMMUNITY WORK INDUSTRIES.** Industries in this class shall be operated by the department of corrections. They shall be designed and managed to provide services in the inmate's resident community at a reduced cost. The services shall be provided to public agencies, to persons who are poor or infirm, or to nonprofit organizations.

Inmates in this program shall reside in facilities owned by, contracted for, or licensed by the department of corrections. A unit of local government shall provide work supervision services without charge to the state and shall pay the inmate's wage.

The department of corrections shall reimburse participating units of local government for liability and workers compensation insurance costs.

Inmates who work in this class of industries shall do so at their own choice and shall receive a gratuity which shall not exceed the minimum wage for their work.

(5) **CLASS V: COMMUNITY SERVICE PROGRAMS.** Programs in this class shall be subject to supervision by the department of corrections. The purpose of this class of industries is to enable an offender, placed on community supervision, to work off all or part of a community service order as ordered by the sentencing court.

Employment shall be in a community service program operated by the state, local units of government, or a nonprofit agency.

To the extent that funds are specifically made available for such purposes, the department of corrections shall reimburse nonprofit agencies for workers compensation insurance costs. [1990 c 22 § 1; 1989 c 185 § 7; 1986 c 193 § 2; 1985 c 151 § 1; 1983 c 255 § 5; 1981 c 136 § 11.]

Severability—1983 c 255: See RCW 72.74.900.

Fish and game projects in prison work programs subject to RCW 72.09.100: RCW 72.63.020.

72.09.110 Inmates' wages—Supporting cost of corrections—Crime victims' compensation, restitution, family support. All inmates working in prison industries shall participate in the cost of corrections, including costs to develop and implement correctional industries programs. The secretary shall develop a formula which

can be used to determine the extent to which the wages of these inmates will be deducted for this purpose. The amount so deducted shall be placed in the general fund and shall be a reasonable amount which will not unduly discourage the incentive to work. The secretary may direct the state treasurer to deposit a portion of these moneys in the crime victims compensation account. Except the secretary shall direct all moneys received by an inmate, for testifying in any judicial proceeding, go into the crime victims compensation account.

When the secretary finds it appropriate and not unduly destructive of the work incentive, the secretary shall also provide deductions for restitution, savings, and family support. [1991 c 133 § 1; 1989 c 185 § 9; 1986 c 162 § 1; 1981 c 136 § 12.]

72.09.260 Community service litter cleanup programs—Requirements. (1) The department shall assist local units of government in establishing community service programs for litter cleanup. Community service litter cleanup programs must include the following: (a) Procedures for documenting the number of community service hours worked in litter cleanup by each offender; (b) plans to coordinate litter cleanup activities with local governmental entities responsible for roadside and park maintenance; (c) insurance coverage for offenders during litter cleanup activities pursuant to RCW 51.12.045; (d) provision of adequate safety equipment and, if needed, weather protection gear; and (e) provision for including felons and misdemeanants in the program.

(2) Community service programs established under this section shall involve, but not be limited to, persons convicted of nonviolent, drug-related offenses.

(3) Nothing in this section shall diminish the department's authority to place offenders in community service programs or to determine the suitability of offenders for specific programs.

(4) As used in this section, "litter cleanup" includes cleanup and removal of solid waste that is illegally dumped. [1990 c 66 § 2.]

Findings—Intent—1990 c 66: "The legislature finds that the amount of litter along the state's roadways is increasing at an alarming rate and that local governments often lack the human and fiscal resources to remove litter from public roads. The legislature also finds that persons committing nonviolent, drug-related offenses can often be productively engaged through programs to remove litter from county and municipal roads. It is therefore the intent of the legislature to assist local units of government in establishing community service programs for litter cleanup and to establish a funding source for such programs." [1990 c 66 § 1.]

72.09.300 Local law and justice council—Joint establishment—Local law and justice plan—Rules—Base level of services. (1) A county legislative authority may by resolution or ordinance establish a local law and justice council. The county legislative authority shall determine the size and composition of the council, which shall include the county sheriff and a representative of the municipal police departments within the county, the county prosecutor and a representative of the municipal prosecutors within the county, a representative of the city legislative authorities within the county, a representative of the county's superior,

district, and municipal courts, the county jail administrator, the county clerk, the county risk manager, and the secretary of corrections. Officials designated may appoint representatives.

(2) A combination of counties may establish a local law and justice council by intergovernmental agreement. The agreement shall comply with the requirements of this section.

(3) The local law and justice council shall develop a local law and justice plan for the county. The council shall design the elements and scope of the plan, subject to final approval by the county legislative authority. The general intent of the plan shall include seeking means to maximize local resources, reduce duplication of services, and share resources between local and state government. The plan shall also include a section on jail management. This section may include the following elements:

(a) A description of current jail conditions, including whether the jail is overcrowded;

(b) A description of potential alternatives to incarceration;

(c) A description of current jail resources;

(d) A description of the jail population as it presently exists and how it is projected to change in the future;

(e) A description of projected future resource requirements;

(f) A proposed action plan, which shall include recommendations to maximize resources, maximize the use of intermediate sanctions, minimize overcrowding, avoid duplication of services, and effectively manage the jail and the offender population;

(g) A list of proposed advisory jail standards and methods to effect periodic quality assurance inspections of the jail;

(h) A proposed plan to collect, synthesize, and disseminate technical information concerning local criminal justice activities, facilities, and procedures;

(i) A description of existing and potential services for offenders including employment services, substance abuse treatment, mental health services, and housing referral services.

(4) The council may propose other elements of the plan, which shall be subject to review and approval by the county legislative authority, prior to their inclusion into the plan.

(5) The county legislative authority may request technical assistance in developing or implementing the plan from other units or agencies of state or local government, which shall include the department, the office of financial management, and the Washington association of sheriffs and police chiefs.

(6) Upon receiving a request for assistance from a county, the department may provide the requested assistance.

(7) The secretary may adopt rules for the submittal, review, and approval of all requests for assistance made to the department. The secretary may also appoint an advisory committee of local and state government officials to recommend policies and procedures relating to the state and local correctional systems and to assist the department in providing technical assistance to local

governments. The committee shall include representatives of the county sheriffs, the police chiefs, the county prosecuting attorneys, the county and city legislative authorities, and the jail administrators. The secretary may contract with other state and local agencies and provide funding in order to provide the assistance requested by counties.

(8) The department shall establish a base level of state correctional services, which shall be determined and distributed in a consistent manner state-wide. The department's contributions to any local government, approved pursuant to this section, shall not operate to reduce this base level of services. [1991 c 363 § 148; 1987 c 312 § 3.]

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

Purpose—1987 c 312 § 3: "It is the purpose of RCW 72.09.300 to encourage local and state government to join in partnerships for the sharing of resources regarding the management of offenders in the correctional system. The formation of partnerships between local and state government is intended to reduce duplication while assuring better accountability and offender management through the most efficient use of resources at both the local and state level." [1987 c 312 § 1.]

72.09.330 Sex offenders—Registration—Notice to persons convicted of sex offenses. (1) The department shall provide written notification to an inmate convicted of a sex offense of the registration requirements of RCW 9A.44.130 at the time of the inmate's release from confinement and shall receive and retain a signed acknowledgement of receipt.

(2) The department shall provide written notification to an individual convicted of a sex offense from another state of the registration requirements of RCW 9A.44.130 at the time the department accepts supervision and has legal authority of the individual under the terms and conditions of the interstate compact agreement under RCW 9.95.270. [1990 c 3 § 405.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.
Sex offense defined: RCW 9A.44.130.

72.09.340 Supervision of sexually violent offenders—Public safety. In making all discretionary decisions regarding supervision of sexually violent offenders, the department of corrections shall set priorities and make decisions based on an assessment of public safety risks rather than the legal category of the sentences. [1990 c 3 § 708.]

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

Chapter 72.20 MAPLE LANE SCHOOL

Sections
72.20.040 Duties of superintendent.

72.20.040 Duties of superintendent. The superintendent, subject to the direction and approval of the secretary shall:

[1990-91 RCW Supp—page 1548]

(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 secretary, as may seem to him proper or necessary for the government of such institution and for the employment, discipline and education of the inmates, except for the program of education provided pursuant to RCW 28A.190.030 through 28A.190.050 which shall be governed by the school district conducting the program.

(3) Exercise such other powers, and perform such other duties as the secretary may prescribe. [1990 c 33 § 593; 1979 ex.s. c 217 § 10; 1979 c 141 § 229; 1959 c 39 § 2; 1959 c 28 § 72.20.040. Prior: 1913 c 157 § 5; RRS § 4635.]

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

Effective date—Severability—1979 ex.s. c 217: See notes following RCW 28A.190.020.

Chapter 72.36 SOLDIERS' AND VETERANS' HOMES

Sections
72.36.035 Definitions.

72.36.035 Definitions. For purposes of this chapter, unless the context clearly indicates otherwise, "actual bona fide residents of this state" shall mean persons who have a domicile in the state of Washington immediately prior to application for membership in the soldiers' home or colony or veterans' home. The term "domicile" shall mean a person's true, fixed, and permanent home and place of habitation, and shall be the place where the person intends to remain, and to which the person expects to return when the person leaves without intending to establish a new domicile elsewhere. "Veteran" has the same meaning established in RCW 41.04.005. [1991 c 240 § 2; 1977 ex.s. c 186 § 11.]

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

Chapter 72.40 STATE SCHOOLS FOR BLIND, DEAF, SENSORY HANDICAPPED

Sections
72.40.115 Repealed.
72.40.120 School for the deaf—School for the blind—Appropriations.

72.40.115 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

72.40.120 School for the deaf—School for the blind—Appropriations. Any appropriation for the

school for the deaf or the school for the blind shall be made directly to the school for the deaf or the school for the blind. [1991 c 65 § 1.]

Effective date—1991 c 65: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 65 § 3.]

Chapter 72.60

CORRECTIONAL INDUSTRIES

(Formerly: Institutional industries)

Sections

72.60.235 Implementation plan for prison industries.

72.60.235 Implementation plan for prison industries.

(1) The department of corrections shall develop, in accordance with RCW 72.09.010, a site-specific implementation plan for prison industries space at Clallam Bay corrections center, McNeil Island corrections center, and the one thousand twenty-four bed medium security prison as appropriated for and authorized by the legislature.

(2) Each implementation plan shall include, but not be limited to, sufficient space and design elements that try to achieve a target of twenty-five percent of the total inmates in class I employment programs and twenty-five percent of the total inmates in class II employment programs or as much of the target as possible without jeopardizing the efficient and necessary day-to-day operation of the prison. The implementation plan shall also include educational opportunities and employment, wage, and other incentives. The department shall include in the implementation plans an incentive program based on wages, and the opportunity to contribute all or a portion of their wages towards an array of incentives. The funds recovered from the sale, lease, or rental of incentives should be considered as a possible source of revenue to cover the capitalized cost of the additional space necessary to accommodate the increased class I and class II industries programs.

(3) The incentive program shall be developed so that inmates can earn higher wages based on performance and production. Only those inmates employed in class I and class II jobs may participate in the incentive program. The department shall develop special program criteria for inmates with physical or mental handicaps so that they can participate in the incentive program.

(4) The department shall propose rules specifying that inmate wages, other than the amount an inmate owes for taxes, legal financial obligations, and to the victim restitution fund, shall be returned to the department to pay for the cost of prison operations, including room and board.

(5) The plan shall identify actual or potential legal or operational obstacles, or both, in implementing the components of the plan as specified in this section, and recommend strategies to remove the obstacles.

(6) The department shall submit the plan to the appropriate committees of the legislature and to the governor by October 1, 1991. [1991 c 256 § 2.]

Finding—1991 c 256: "The legislature finds that the rehabilitation process may be enhanced by participation in training, education, and employment-related incentive programs and may be a consideration in reducing time in confinement." [1991 c 256 § 1.]

Application to prison construction—1991 c 256: "The overall prison design plans for new construction at Clallam Bay corrections center, McNeil Island corrections center, and the one thousand twenty-four bed medium security prison as appropriated for and authorized by the legislature shall not be inconsistent with the implementation plan outlined in this act. No provision under this act shall require the department of corrections to redesign, postpone, or delay the construction of any of the facilities outlined in RCW 72.60.235." [1991 c 256 § 3.]

Severability—1991 c 256: "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." [1991 c 256 § 4.]

Chapter 72.64

LABOR AND EMPLOYMENT OF PRISONERS

Sections

72.64.150 Interstate forest fire suppression compact.

72.64.160 Inmate forest fire suppression crews—Classification.

72.64.150 Interstate forest fire suppression compact.

The Interstate Forest Fire Suppression Compact as set forth in this section 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:

**INTERSTATE FOREST FIRE SUPPRESSION COMPACT
ARTICLE I—Purpose**

The purpose of this compact is to provide for the development and execution of programs to facilitate the use of offenders in the forest fire suppression efforts of the party states for the ultimate protection of life, property, and natural resources in the party states. The purpose of this compact is also to, in emergent situations, allow a sending state to cross state lines with an inmate when, due to weather or road conditions, it is necessary to cross state lines to facilitate the transport of an inmate.

ARTICLE II—Definitions

As used in this compact, unless the context clearly requires otherwise:

(a) "Sending state" means a state party to this compact from which a fire suppression unit is traveling.

(b) "Receiving state" means a state party to this compact to which a fire suppression unit is traveling.

(c) "Inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution.

(d) "Institution" means any prison, reformatory, honor camp, or other correctional facility, except facilities for the mentally ill or mentally handicapped, in which inmates may lawfully be confined.

(e) "Fire suppression unit" means a group of inmates selected by the sending states, corrections personnel, and

any other persons deemed necessary for the transportation, supervision, care, security, and discipline of inmates to be used in forest fire suppression efforts in the receiving state.

(f) "Forest fire" means any fire burning in any land designated by a party state or federal land management agencies as forest land.

ARTICLE III—Contracts

Each party state may make one or more contracts with any one or more of the other party states for the assistance of one or more fire suppression units in forest fire suppression efforts. Any such contract shall provide for matters as may be necessary and appropriate to fix the obligations, responsibilities, and rights of the sending and receiving state.

The terms and provisions of this compact shall be part of any contract entered into by the authority of, or pursuant to, this compact. Nothing in any such contract may be inconsistent with this compact.

ARTICLE IV—Procedures and Rights

(a) Each party state shall appoint a liaison for the coordination and deployment of the fire suppression units of each party state.

(b) Whenever the duly constituted judicial or administrative authorities in a state party to this compact has entered into a contract pursuant to this compact decides that the assistance of a fire suppression unit of a party state is required for forest fire suppression efforts, such authorities may request the assistance of one or more fire suppression units of any state party to this compact through an appointed liaison.

(c) Inmates who are members of a fire suppression unit shall at all times be subject to the jurisdiction of the sending state, and at all times shall be under the ultimate custody of corrections officers duly accredited by the sending state.

(d) The receiving state shall make adequate arrangements for the confinement of inmates who are members of a fire suppression unit of a sending state in the event corrections officers duly accredited by the sending state make a discretionary determination that an inmate requires institutional confinement.

(e) Cooperative efforts shall be made by corrections officers and personnel of the receiving state located at a fire camp with the corrections officers and other personnel of the sending state in the establishment and maintenance of fire suppression unit base camps.

(f) All inmates who are members of a fire suppression unit of a sending state shall be cared for and treated equally with such similar inmates of the receiving state.

(g) Further, in emergent situations a sending state shall be granted authority and all the protections of this compact to cross state lines with an inmate when, due to weather or road conditions, it is necessary to facilitate the transport of an inmate.

ARTICLE V—Acts Not Reviewable In Receiving State; Extradition

(a) If while located within the territory of a receiving state there occurs against the inmate within such state any criminal charge or if the inmate is suspected of committing 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 member of a fire suppression unit of the sending state who is deemed to have escaped by a duly accredited corrections officer of a sending state shall be under the jurisdiction of both the sending state and the receiving state. Nothing contained in this compact shall be construed to prevent or affect the activities of officers and guards of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI—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 states from among the states of Idaho, Oregon, and Washington.

ARTICLE VII—Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it has 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.

ARTICLE VIII—Other Arrangements Unaffected

Nothing contained in this compact may be construed to abrogate or impair any agreement that a party state may have with a nonparty 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 IX—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. [1991 c 131 § 1.]

Severability—1991 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." [1991 c 131 § 3.]

72.64.160 Inmate forest fire suppression crews—
Classification. For the purposes of RCW 72.64.150, inmate forest fire suppression crews may be considered a class I free venture industry, as defined in RCW 72.09-.100, when fighting fires on federal lands. [1991 c 131 § 2.]

Severability—1991 c 131: See note following RCW 72.64.150.

Chapter 72.72

CRIMINAL BEHAVIOR OF RESIDENTS OF INSTITUTIONS

Sections

72.72.030 Institutional impact account—Reimbursement to political subdivisions—Limitations.

72.72.030 Institutional impact account—Reimbursement to political subdivisions—Limitations. (1) There is hereby created, in the state treasury, an institutional impact account. The secretary of social and health services may reimburse political subdivisions for criminal justice costs incurred directly as a result of crimes committed by offenders residing in an institution as defined herein under the jurisdiction of the secretary of social and health services. Such reimbursement shall be made to the extent funds are available from the institutional impact account. Reimbursements shall be limited to law enforcement, prosecutorial, judicial, and jail facilities costs which are documented to be strictly related to the criminal activities of the offender.

(2) The secretary of corrections may reimburse political subdivisions for criminal justice costs incurred directly as a result of crimes committed by offenders residing in an institution as defined herein under the jurisdiction of the secretary of corrections. Such reimbursement shall be made to the extent funds are available from the institutional impact account. Reimbursements shall be limited to law enforcement, prosecutorial, judicial, and jail facilities costs which are documented to be strictly related to the criminal activities of the offender. [1991 1st sp.s. c 13 § 10; 1985 c 57 § 71; 1983 c 279 § 2; 1979 ex.s. c 108 § 3.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Effective date—1985 c 57: See note following RCW 15.52.320.

Title 73

VETERANS AND VETERANS' AFFAIRS

Chapters

73.04 General provisions.

**Chapter 73.04
 GENERAL PROVISIONS**

Sections

73.04.090 Benefits, preferences, exemptions, etc., limited to veterans subject to full, continuous military control.
 73.04.115 Free license plates for surviving spouses of deceased prisoners of war.

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 or to persons defined as "veterans" in RCW 41.04.005. Service with such forces in a civilian capacity, or in any capacity wherein a person retained the right to terminate his or her 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. [1991 c 240 § 3; 1974 ex.s. c 171 § 45; 1947 c 142 § 1; Rem. Supp. 1947 § 10758-115.]

Emergency management: Chapter 38.52 RCW.

73.04.115 Free license plates for surviving spouses of deceased prisoners of war. The department shall issue to the surviving spouse of any deceased former prisoner of war described in RCW 73.04.110(2), one set of regular or special license plates for use on a personal passenger vehicle registered to that person.

The plates shall be issued without the payment of any license fees or excise tax on the vehicle. Whenever any person who has been issued license plates under this section applies to the department for transfer of the plates to a subsequently acquired motor vehicle, a transfer fee of five dollars shall be charged in addition to all other appropriate fees. If the surviving spouse remarries, he or she shall return the special plates to the department within fifteen days and apply for regular license plates. [1990 c 250 § 91; 1987 c 98 § 1.]

Severability—1990 c 250: See note following RCW 46.16.301.

Title 74

PUBLIC ASSISTANCE

Chapters

- 74.04** General provisions—Administration.
- 74.08** Eligibility generally—Standards of assistance—Old age assistance.
- 74.09** Medical care.
- 74.13** Child welfare services.
- 74.14B** Children's services.
- 74.15** Agencies for care of children, expectant mothers, developmentally disabled.
- 74.18** Department of services for the blind.
- 74.20** Support of dependent children.
- 74.20A** Support of dependent children—Alternative method—1971 act.
- 74.21** Family independence program.
- 74.22** Work incentive program for recipients of public assistance.
- 74.23** Work incentive program for recipients of aid to families with dependent children.
- 74.25** Job opportunities and basic skills training program.
- 74.38** Senior citizens services act.
- 74.42** Nursing homes—Resident care, operating standards.
- 74.46** Nursing home auditing and cost reimbursement act of 1980.

Chapter 74.04

GENERAL PROVISIONS—ADMINISTRATION

Sections

- 74.04.005 Definitions—Eligibility for assistance.
- 74.04.055 Cooperation with federal government—Construction—Conflict with federal requirements.
- 74.04.390 through 74.04.477 Repealed.
- 74.04.500 Food stamp program—Authorized.
- 74.04.505 Repealed.
- 74.04.515 Food stamp program—Discrimination prohibited.

74.04.005 Definitions—Eligibility for assistance.

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 social and health services.

(3) "County or local office"—The administrative office for one or more counties or designated service areas.

(4) "Director" or "secretary" means the secretary of social and health services.

(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 for which provision for federal funds or aid may from time to time be made, or a federally administered needs-based program.

(6)(a) "General assistance"—Aid to persons in need who:

(i) Are not eligible to receive federal-aid assistance, other than food stamps and medical assistance; however, an individual who refuses or fails to cooperate in obtaining federal-aid assistance, without good cause, is not eligible for general assistance;

(ii) Are either:

(A) Pregnant: PROVIDED, That need is based on the current income and resource requirements of the federal aid to families with dependent children program: PROVIDED FURTHER, That during any period in which an aid for dependent children employable program is not in operation, only those pregnant women who are categorically eligible for medicaid are eligible for general assistance; or

(B) Incapacitated from gainful employment by reason of bodily or mental infirmity that will likely continue for a minimum of ninety days as determined by the department. Persons who are unemployable due to alcohol or drug addiction are not eligible for general assistance. Persons receiving general assistance on July 26, 1987, or becoming eligible for such assistance thereafter, due to an alcohol or drug-related incapacity, shall be referred to appropriate assessment, treatment, shelter, or supplemental security income referral services as authorized under chapter 74.50 RCW. Referrals shall be made at the time of application or at the time of eligibility review. Alcoholic and drug addicted clients who are receiving general assistance on July 26, 1987, may remain on general assistance if they otherwise retain their eligibility until they are assessed for services under chapter 74.50 RCW. This subsection (6)(a)(ii)(B) shall not be construed to prohibit the department from granting general assistance benefits to alcoholics and drug addicts who are incapacitated due to other physical or mental conditions that meet the eligibility criteria for the general assistance program;

(iii) Are citizens or aliens lawfully admitted for permanent residence or otherwise residing in the United States under color of law; and

(iv) Have furnished the department their social security account number. If the social security account number cannot be furnished because it has not been issued or is not known, an application for a number shall be made prior to authorization of assistance, and the social security number shall be provided to the department upon receipt.

(b) Notwithstanding the provisions of subsection (6)(a)(i), (ii), and (c) of this section, general assistance shall be provided to the following recipients of federal-aid assistance:

(i) Recipients of supplemental security income whose need, as defined in this section, is not met by such supplemental security income grant because of separation from a spouse; or

(ii) To the extent authorized by the legislature in the biennial appropriations act, to recipients of aid to families with dependent children whose needs are not being met because of a temporary reduction in monthly income below the entitled benefit payment level caused by loss or reduction of wages or unemployment compensation benefits or some other unforeseen circumstances. The amount of general assistance authorized shall not exceed the difference between the entitled benefit payment level and the amount of income actually received.

(c) General assistance shall be provided only to persons who are not members of assistance units receiving federal aid assistance, except as provided in subsection (6)(a)(ii)(A) and (b) of this section, and will accept available services which can reasonably be expected to enable the person to work or reduce the need for assistance unless there is good cause to refuse. Failure to accept such services shall result in termination until the person agrees to cooperate in accepting such services and subject to the following maximum periods of ineligibility after reapplication:

(i) First failure: One week;

(ii) Second failure within six months: One month;

(iii) Third and subsequent failure within one year: Two months.

(d) The department shall adopt by rule medical criteria for general assistance eligibility to ensure that eligibility decisions are consistent with statutory requirements and are based on clear, objective medical information.

(e) The process implementing the medical criteria shall involve consideration of opinions of the treating or consulting physicians or health care professionals regarding incapacity, and any eligibility decision which rejects uncontroverted medical opinion must set forth clear and convincing reasons for doing so.

(f) Recipients of general assistance based upon a finding of incapacity from gainful employment who remain otherwise eligible shall not have their benefits terminated absent a clear showing of material improvement in their medical or mental condition or specific error in the prior determination that found the recipient eligible by reason of incapacitation. Recipients of general assistance based upon pregnancy who relinquish their child for adoption, remain otherwise eligible, and are not eligible to receive benefits under the federal aid to families with dependent children program shall not have their benefits terminated until the end of the month in which the period of six weeks following the birth of the recipient's child falls. Recipients of the federal aid to families with dependent children program who lose their eligibility solely because of the birth and relinquishment of the qualifying child may receive general assistance through the end of the month in which the period of six weeks following the birth of the child falls.

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

(8) "Recipient"—Any person receiving assistance and in addition those dependents whose needs are included in the recipient's assistance.

(9) "Standards of assistance"—The level of income required by an applicant or recipient to maintain a level of living specified by the department.

(10) "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 a resource 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 or a natural disaster, shall raise a rebuttable 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 a resource which can be made available to meet need.

(b) Household furnishings and personal effects and other personal property having great sentimental value to the applicant or recipient, as limited by the department consistent with limitations on resources and exemptions for federal aid assistance.

(c) A motor vehicle, other than a motor home, used and useful having an equity value not to exceed one thousand five hundred dollars.

(d) All other resources, including any excess of values exempted, not to exceed one thousand dollars or other limit as set by the department, to be consistent with limitations on resources and exemptions necessary for federal aid assistance.

(e) Applicants for or recipients of general assistance may retain the following described resources in addition to exemption for a motor vehicle or home and not be ineligible for public assistance because of such resources:

(i) Household furnishings, personal effects, and other personal property having great sentimental value to the applicant or recipient;

(ii) Term and burial insurance for use of the applicant or recipient;

(iii) Life insurance having a cash surrender value not exceeding one thousand five hundred dollars; and

(iv) Cash, marketable securities, and any excess of values above one thousand five hundred dollars equity in a vehicle and above one thousand five hundred dollars in cash surrender value of life insurance, not exceeding one thousand five hundred dollars for a single person or two thousand two hundred fifty dollars for a family unit of two or more. The one thousand dollar limit in subsection

(10)(d) of this section does not apply to recipients of or applicants for general assistance.

(f) 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, except that: (i) The department may exempt resources or income when the income and resources are determined necessary to the applicant's or recipient's restoration to independence, to decrease the need for public assistance, or to aid in rehabilitating the applicant or recipient or a dependent of the applicant or recipient; and (ii) the department may provide grant assistance for a period not to exceed nine months from the date the agreement is signed pursuant to this section to persons who are otherwise ineligible because of excess real property owned by such persons when they are making a good faith effort to dispose of that property: PROVIDED, That:

(A) The applicant or recipient signs an agreement to repay the lesser of the amount of aid received or the net proceeds of such sale;

(B) If the owner of the excess property ceases to make good faith efforts to sell the property, the entire amount of assistance may become an overpayment and a debt due the state and may be recovered pursuant to RCW 43.20B.630;

(C) Applicants and recipients are advised of their right to a fair hearing and afforded the opportunity to challenge a decision that good faith efforts to sell have ceased, prior to assessment of an overpayment under this section; and

(D) At the time assistance is authorized, the department files a lien without a sum certain on the specific property.

(11) "Income"—(a) 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 during the month of application or after applying for or receiving public assistance. 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. In determining the amount of assistance to which an applicant or recipient of aid to families with dependent children is entitled, the department is hereby authorized to disregard as a resource or income the earned income exemptions consistent with federal requirements. 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 and recipients of public assistance, but consistent with federal requirements. In formulating rules and regulations pursuant to this chapter, the department shall define income and resources and the availability thereof, consistent with federal requirements. 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.

(b) If, under applicable federal requirements, the state has the option of considering property in the form of lump sum compensatory awards or related settlements received by an applicant or recipient as income or as a resource, the department shall consider such property to be a resource.

(12) "Need"—The difference between the applicant's or recipient's standards of assistance 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 income received by or available to the applicant or recipient and the dependent members of his family.

(13) For purposes of determining eligibility for public assistance and participation levels in the cost of medical care, the department shall exempt restitution payments made to people of Japanese and Aleut ancestry pursuant to the Civil Liberties Act of 1988 and the Aleutian and Pribilof Island Restitution Act passed by congress, P.L. 100-383, including all income and resources derived therefrom.

(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. [1991 1st sp.s. c 10 § 1; 1991 c 126 § 1; 1990 c 285 § 2; 1989 1st ex.s. c 9 § 816. Prior: 1987 c 406 § 9; 1987 c 75 § 31; 1985 c 335 § 2; 1983 1st ex.s. c 41 § 36; 1981 2nd ex.s. c 10 § 5; 1981 1st ex.s. c 6 § 1; prior: 1981 c 8 § 1; prior: 1980 c 174 § 1; 1980 c 84 § 1; 1979 c 141 § 294; 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 (Initiative Measure No. 178, approved November 7, 1950); 1949 c 6 § 3; Rem. Supp. 1949 § 9998-33c.]

Severability—1991 1st sp.s. c 10: "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." [1991 1st sp.s. c 10 § 2.]

Effective date—1991 1st sp.s. c 10: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 1st sp.s. c 10 § 3.]

Findings—Purpose—1990 c 285: "(1) The legislature finds that each year less than five percent of pregnant teens relinquish their babies for adoption in Washington state. Nationally, fewer than eight percent of pregnant teens relinquish their babies for adoption.

(2) The legislature further finds that barriers such as lack of information about adoption, inability to voluntarily enter into adoption agreements, and current state public assistance policies act as disincentives to adoption.

(3) It is the purpose of this act to support adoption as an option for women with unintended pregnancies by removing barriers that act as disincentives to adoption." [1990 c 285 § 1.]

Severability—1990 c 285: "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." [1990 c 285 § 10.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

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

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

Effective date—1981 1st ex.s. c 6: "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 July 1, 1981." [1981 1st ex.s. c 6 § 31.]

Severability—1981 1st ex.s. c 6: "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." [1981 1st ex.s. c 6 § 30.]

Consolidated standards of need: RCW 74.04.770.

74.04.055 Cooperation with federal government—Construction—Conflict with federal requirements. In furtherance of the policy of this state to cooperate with the federal government in the programs included in this title the secretary 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. If any part of this chapter is found to be in conflict with federal requirements which are a prescribed condition to the receipts of federal funds to the state, the conflicting part of this chapter is hereby inoperative solely to the extent of the conflict with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this chapter. [1991 c 126 § 2; 1979 c 141 § 298; 1963 c 228 § 4; 1959 c 26 § 74.04.055. Prior: 1953 c 174 § 50.]

74.04.390 through 74.04.477 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

74.04.500 Food stamp program—Authorized. The department of social and health services is authorized to establish a food stamp program under the federal food stamp act of 1977, as amended. [1991 c 126 § 3; 1979 c 141 § 322; 1969 ex.s. c 172 § 4.]

Unlawful use of food coupons: RCW 9.91.140.

74.04.505 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

74.04.515 Food stamp program—Discrimination prohibited. In administering the food stamp program, there shall be no discrimination against any applicant or recipient by reason of age, sex, handicap, religious creed, political beliefs, race, color, or national origin. [1991 c 126 § 4; 1969 ex.s. c 172 § 7.]

Chapter 74.08

ELIGIBILITY GENERALLY—STANDARDS OF ASSISTANCE—OLD AGE ASSISTANCE

Sections

74.08.044 Need for personal and special care—Licensing—Rules and regulations.

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 nursing facility as defined in the federal social security act. [1991 1st sp.s. c 8 § 5; 1975-'76 2nd ex.s. c 52 § 1; 1969 ex.s. c 172 § 11.]

Effective date—1991 1st sp.s. c 8: See note following RCW 18.51.050.

Chapter 74.09

MEDICAL CARE

Sections

74.09.010 Definitions.
 74.09.160 Presentment of charges by contractors.
 74.09.180 Chapter does not apply where another party liable—Exception—Subrogation—Lien—Reimbursement.
 74.09.182 Recodified as RCW 43.20B.040.
 74.09.184 Repealed.
 74.09.186 Recodified as RCW 43.20B.050.
 74.09.250 False statements regarding institutions, facilities—Penalties.
 74.09.260 Excessive charges, payments—Penalties.
 74.09.290 Department audits and investigations of providers—Other powers.
 74.09.405 Children's health program—Purpose.
 74.09.415 Children's health program established.
 74.09.425 Children's health care accessibility—Community action.
 74.09.435 Children's health program—Biennial evaluation.
 74.09.510 Medical assistance—Accordance with eligibility requirements—Ineligibility.
 74.09.520 Medical assistance—Care and services included—Funding limitations.
 74.09.524 Medical assistance—Reimbursement to schools for services for handicapped children.
 74.09.700 Medical care—Limited casualty program.
 74.09.730 Disproportionate share hospital adjustment.
 74.09.731 Disproportionate share hospital adjustment.
 74.09.750 Recodified as RCW 43.20B.140.
 74.09.790 Definitions.

74.09.010 Definitions. As used in this chapter:

(1) "Children's health program" means the health care services program provided to children under eight-year years of age and in households with incomes at or below the federal poverty level as annually defined by the federal department of health and human services as adjusted for family size, and who are not otherwise eligible for medical assistance or the limited casualty program for the medically needy.

(2) "Committee" means the children's health services committee created in *section 3 of this act.

(3) "County" means the board of county commissioners, county council, county executive, or tribal jurisdiction, or its designee. A combination of two or more county authorities or tribal jurisdictions may enter into joint agreements to fulfill the requirements of RCW 74.09.415 through 74.09.435.

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

(5) "Department of health" means the Washington state department of health created pursuant to RCW 43.70.020.

(6) "Internal management" means the administration of medical assistance, medical care services, the children's health program, and the limited casualty program.

(7) "Limited casualty program" means the medical care program provided to medically needy persons as defined under Title XIX of the federal social security act, and to medically indigent persons who are without income or resources sufficient to secure necessary medical services.

(8) "Medical assistance" means the federal aid medical care program provided to categorically needy persons as defined under Title XIX of the federal social security act.

(9) "Medical care services" means the limited scope of care financed by state funds and provided to general assistance recipients, and recipients of alcohol and drug addiction services provided under chapter 74.50 RCW.

(10) "Nursing home" means nursing home as defined in RCW 18.51.010.

(11) "Poverty" means the federal poverty level determined annually by the United States department of health and human services, or successor agency.

(12) "Secretary" means the secretary of social and health services. [1990 c 296 § 6; 1987 c 406 § 11; 1981 1st ex.s. c 6 § 18; 1981 c 8 § 17; 1979 c 141 § 333; 1959 c 26 § 74.09.010. Prior: 1955 c 273 § 2.]

*Reviser's note: "Section 3 of this act" [1990 c 296] which created the committee was vetoed by the governor.

Effective date—1990 c 296: See note following RCW 74.09.405.

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.09.160 Presentment of charges by contractors. 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 no later than twelve months from the date of service. If the final charges are not presented within the twelve-month period, they shall not be a charge against the state. Said twelve-month 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. For services rendered prior to July 28, 1991, final charges shall not be a charge against the state unless they are presented within one hundred twenty days from the date of service. [1991 c 103 § 1; 1980 c 32 §

11; 1979 ex.s. c 81 § 1; 1973 1st ex.s. c 48 § 1; 1959 c 26 § 74.09.160. Prior: 1955 c 273 § 17.]

74.09.180 Chapter does not apply where another party liable—Exception—Subrogation—Lien—Reimbursement. 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 may furnish assistance, under the provisions of this chapter, for the results of injuries to or illness of a recipient, and the department shall thereby be subrogated to the recipient's rights against the recovery had from any tortfeasor or the tortfeasor's insurer, or both, and shall have a lien thereupon to the extent of the value of the assistance furnished by the department. To secure reimbursement for assistance provided under this section, the department may pursue its remedies under RCW 43.20B.060. [1990 c 100 § 2; 1987 c 283 § 14; 1979 ex.s. c 171 § 14; 1971 ex.s. c 306 § 1; 1969 ex.s. c 173 § 8; 1959 c 26 § 74.09.180. Prior: 1955 c 273 § 19.]

Application—1990 c 100 §§ 2, 4, 7(1), 8(2): See note following RCW 43.20B.060.

Severability—Savings—1987 c 283: See notes following RCW 43.20A.020.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.09.182 Recodified as RCW 43.20B.040. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

74.09.184 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

74.09.186 Recodified as RCW 43.20B.050. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

74.09.250 False statements regarding institutions, facilities—Penalties. Any person, including any corporation, that knowingly makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operations of any institution or facility in order that such institution or facility may qualify (either upon initial certification or upon recertification) as a hospital, nursing facility, or home health agency, shall be guilty of a class C felony: PROVIDED, That the fine, if imposed, shall not be in an amount more than five thousand dollars. [1991 1st sp.s. c 8 § 6; 1979 ex.s. c 152 § 6.]

Effective date—1991 1st sp.s. c 8: See note following RCW 18.51.050.

74.09.260 Excessive charges, payments—Penalties. Any person, including any corporation, that knowingly:

(1) Charges, for any service provided to a patient under any medical care plan authorized under this chapter, money or other consideration at a rate in excess of the

rates established by the department of social and health services; or

(2) Charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under such plan, any gift, money, donation, or other consideration (other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient):

(a) As a precondition of admitting a patient to a hospital or nursing facility; or

(b) As a requirement for the patient's continued stay in such facility,

when the cost of the services provided therein to the patient is paid for, in whole or in part, under such plan, shall be guilty of a class C felony: PROVIDED, That the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030. [1991 1st sp.s. c 8 § 7; 1979 ex.s. c 152 § 7.]

Effective date—1991 1st sp.s. c 8: See note following RCW 18.51.050.

74.09.290 Department audits and investigations of providers—Other powers. The secretary of the department of social and health services or his authorized representative shall have the authority to:

(1) Conduct audits and investigations of providers of medical and other services furnished pursuant to this chapter, except that the Washington state medical disciplinary board shall generally serve in an advisory capacity to the secretary in the conduct of audits or investigations of physicians. Any overpayment discovered as a result of an audit of a provider under this authority shall be offset by any underpayments discovered in that same audit sample. In order to determine the provider's actual, usual, customary, or prevailing charges, the secretary may examine such random representative records as necessary to show accounts billed and accounts received except that in the conduct of such examinations, patient names, other than public assistance applicants or recipients, shall not be noted, copied, or otherwise made available to the department. In order to verify costs incurred by the department for treatment of public assistance applicants or recipients, the secretary may examine patient records or portions thereof in connection with services to such applicants or recipients rendered by a health care provider, notwithstanding the provisions of RCW 5.60.060, 18.53.200, 18.83.110, or any other statute which may make or purport to make such records privileged or confidential: PROVIDED, That no original patient records shall be removed from the premises of the health care provider, and that the disclosure of any records or information by the department of social and health services is prohibited and shall be punishable as a class C felony according to chapter 9A.20 RCW, unless such disclosure is directly connected to the official purpose for which the records or information were obtained: PROVIDED FURTHER, That the disclosure of patient information as required under this section shall not subject any physician or other health

services provider to any liability for breach of any confidential relationship between the provider and the patient, but no evidence resulting from such disclosure may be used in any civil, administrative, or criminal proceeding against the patient unless a waiver of the applicable evidentiary privilege is obtained: PROVIDED FURTHER, That the secretary shall destroy all copies of patient medical records in their possession upon completion of the audit, investigation or proceedings;

(2) Approve or deny applications to participate as a provider of services furnished pursuant to this chapter;

(3) Terminate or suspend eligibility to participate as a provider of services furnished pursuant to this chapter; and

(4) Adopt, promulgate, amend, and rescind administrative rules and regulations, in accordance with the administrative procedure act, chapter 34.05 RCW, to carry out the policies and purposes of RCW 74.09.200 through 74.09.290. [1990 c 100 § 5; 1983 1st ex.s. c 41 § 23; 1979 ex.s. c 152 § 10.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

74.09.405 Children's health program—Purpose. It is the purpose of RCW 74.09.405 through 74.09.435 and 74.09.010 to provide, consistent with appropriated funds, health care access and services to children in poverty in this state. To this end, a children's health program is established based on the following principles:

(1) Access to preventive and other health care services should be made more readily available for children in poverty.

(2) Unnecessary barriers to health care for children in poverty should be removed.

(3) The status of children's health and their access to health care providers should be evaluated at appropriate intervals to determine program effectiveness and need for modification.

(4) Health care services should be delivered in a cost-effective manner.

(5) The program should be sensitive to cultural and ethnic differences among children in poverty. [1990 c 296 § 1.]

Effective date—1990 c 296: "This act shall take effect July 1, 1990." [1990 c 296 § 9.]

74.09.415 Children's health program established. (1) There is hereby established a program to be known as the children's health program.

To the extent of available funds:

(a) Health care services may be provided to persons who are under eighteen years of age with household incomes at or below the federal poverty level and not otherwise eligible for medical assistance or the limited casualty program for the medically needy.

(b) The determination of eligibility of recipients for health care services shall be the responsibility of the department. The application process shall be easy to understand and, to the extent possible, applications shall be made available at local schools and other appropriate

locations. The department shall make eligibility determinations within the timeframes for establishing eligibility for children on medical assistance, as defined by RCW 74.09.510.

(c) The amount, scope, and duration of health care services provided to eligible children under the children's health program shall be the same as that provided to children under medical assistance, as defined in RCW 74.09.520.

(2) The legislature is interested in assessing the effectiveness of the prenatal care program. However, the legislature recognizes the cost and complexity associated with such assessment.

The legislature accepts the effectiveness of prenatal and maternity care at improving birth outcomes when these services are received by eligible persons. Therefore, the legislature intends to focus scarce assessment resources to determine the extent to which support services such as child care, psychosocial and nutritional assessment and counseling, case management, transportation, and other support services authorized by *this act result in receipt of prenatal and maternity care by eligible persons.

The University of Washington shall conduct a study, based on a statistically significant state-wide sampling of data, to evaluate the effectiveness of the maternity care access program set forth in RCW 74.09.760 through 74.09.820 based on the principles set forth in RCW 74.09.770.

The University of Washington shall develop a plan and budget for the study in consultation with the legislative budget committee. The legislative budget committee shall also monitor the progress of the study.

The department of social and health services shall make data and other information available as needed to the University of Washington as required to conduct this study.

The study shall determine:

(a) The characteristics of women receiving services, including health risk factors;

(b) The extent to which access to maternity care and support services have improved in this state as a result of this program;

(c) The utilization of services and birth outcomes for women and infants served by this program by type of practitioner;

(d) The extent to which birth outcomes for women receiving services under this program have improved in comparison to birth outcomes of nonmedicaid mothers;

(e) The impact of increased medicaid reimbursement to physicians on provider participation;

(f) The difference between costs for services provided under this program and medicaid reimbursement for the services;

(g) The gaps in services, if any, that may still exist for women and their infants as defined by RCW 74.09.790 (1) and (4) served by this program, excluding pregnant substance abusers, and women covered by private health insurance; and

(h) The number and mix of services provided to eligible women as defined by subsection (2)(g) of this section

and the effect on birth outcomes as compared to non-medicaid birth outcomes.

Results of the study shall be submitted to the legislative budget committee and appropriate committees of the legislature, by December 1 of each year through December 1, 1994, beginning with December 1, 1991. [1990 c 296 § 2.]

***Reviser's note:** "This act" [1990 c 296] consists of the enactment of RCW 74.09.405, 74.09.415, 74.09.425, and 74.09.435 and amendments to RCW 74.09.010.

Effective date—1990 c 296: See note following RCW 74.09.405.

74.09.425 Children's health care accessibility—Community action. Local communities are encouraged to take actions necessary to make health care more accessible to children in poverty in their communities, such as coordinating the development of alternative health care delivery systems. To support communities in their efforts, *the committee, in coordination with counties and to the extent funds are available, shall: (1) Advise the secretary and the secretary of health regarding the dispensing of technical assistance to counties to enable them to develop provider resources and expand coordinated provision of health care to children in poverty, and (2) recommend to the secretary financial incentives to be provided within counties requesting assistance according to *section 3 of this act. [1990 c 296 § 4.]

***Reviser's note:** "Section 3 of this act" [1990 c 296] which created "the committee" was vetoed by the governor.

Effective date—1990 c 296: See note following RCW 74.09.405.

74.09.435 Children's health program—Biennial evaluation. *The committee, in coordination with the department of health, shall reevaluate the state of access to care for children in poverty on at least a biennial basis and shall provide this information, along with information on the implementation of RCW 74.09.405 through 74.09.425, to the board of health for consideration of possible inclusion in the biennial state health report. [1990 c 296 § 5.]

***Reviser's note:** The section that created "the committee" [1990 c 296 § 3] was vetoed by the governor.

Effective date—1990 c 296: See note following RCW 74.09.405.

74.09.510 Medical assistance—Accordance with eligibility requirements—Ineligibility. Medical assistance may be provided in accordance with eligibility requirements established by the department of social and health services, as defined in the social security Title XIX state plan for mandatory categorically needy persons and: (1) Individuals who would be eligible for cash assistance except for their institutional status; (2) individuals who are under twenty-one years of age, who would be eligible for aid to families with dependent children, but do not qualify as dependent children and who are in (a) foster care, (b) subsidized adoption, (c) a nursing facility or an intermediate care facility for the mentally retarded, or (d) inpatient psychiatric facilities; (3) the aged, blind, and disabled who: (a) Receive only a state supplement, or (b) would not be eligible for cash

assistance if they were not institutionalized; (4) individuals who would be eligible for but choose not to receive cash assistance; (5) individuals who are enrolled in managed health care systems, who have otherwise lost eligibility for medical assistance, but who have not completed a current six-month enrollment in a managed health care system, and who are eligible for federal financial participation under Title XIX of the social security act; (6) children and pregnant women allowed by federal statute for whom funding is appropriated; and (7) other individuals eligible for medical services under RCW 74.09.035 and 74.09.700 for whom federal financial participation is available under Title XIX of the social security act. [1991 1st sp.s. c 8 § 8; 1989 1st ex.s. c 10 § 8; 1989 c 87 § 2; 1985 c 5 § 2; 1981 2nd ex.s. c 3 § 5; 1981 1st ex.s. c 6 § 20; 1981 c 8 § 19; 1971 ex.s. c 169 § 4; 1970 ex.s. c 60 § 1; 1967 ex.s. c 30 § 4.]

Effective date—1991 1st sp.s. c 8: See note following RCW 18.51.050.

Effective dates—1989 c 87: See notes following RCW 11.94.050.

Severability—1981 2nd ex.s. c 3: "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." [1981 2nd ex.s. c 3 § 8.]

Effective date—**Severability**—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.09.520 Medical assistance—Care and services included—Funding limitations. (1) The term "medical assistance" may include the following care and services: (a) Inpatient hospital services; (b) outpatient hospital services; (c) other laboratory and x-ray services; (d) nursing facility services; (e) physicians' services, which shall include prescribed medication and instruction on birth control devices; (f) medical care, or any other type of remedial care as may be established by the secretary; (g) home health care services; (h) private duty nursing services; (i) dental services; (j) physical and occupational therapy and related services; (k) 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; (l) personal care services, as provided in this section; (m) hospice services; (n) other diagnostic, screening, preventive, and rehabilitative services; and (o) like services when furnished to a handicapped child by a school district as part of an individualized education program established pursuant to RCW 28A.155.010 through 28A.155.100. For the purposes of this section, the department may not cut off any prescription medications, oxygen supplies, respiratory services, or other life-sustaining medical services or supplies.

"Medical assistance," notwithstanding any other provision of law, shall not include routine foot care, or dental services delivered by any health care provider, that are not mandated by Title XIX of the social security act unless there is a specific appropriation for these services. Services included in an individualized education program for a handicapped child under RCW 28A.155.010 through 28A.155.100 shall not qualify as medical assistance prior to the implementation of the funding process developed under RCW 74.09.524.

(2) The department shall amend the state plan for medical assistance under Title XIX of the federal social security act to include personal care services, as defined in 42 C.F.R. 440.170(f), in the categorically needy program.

(3) The department shall adopt, amend, or rescind such administrative rules as are necessary to ensure that Title XIX personal care services are provided to eligible persons in conformance with federal regulations.

(a) These administrative rules shall include financial eligibility indexed according to the requirements of the social security act providing for medicaid eligibility.

(b) The rules shall require clients be assessed as having a medical condition requiring assistance with personal care tasks. Plans of care must be approved by a physician and reviewed by a nurse every ninety days.

(4) The department shall design and implement a means to assess the level of functional disability of persons eligible for personal care services under this section. The personal care services benefit shall be provided to the extent funding is available according to the assessed level of functional disability. Any reductions in services made necessary for funding reasons should be accomplished in a manner that assures that priority for maintaining services is given to persons with the greatest need as determined by the assessment of functional disability.

(5) The department shall report to the appropriate fiscal committees of the legislature on the utilization and associated costs of the personal care option under Title XIX of the federal social security act, as defined in 42 C.F.R. 440.170(f), in the categorically needy program. This report shall be submitted by January 1, 1990, and submitted on a yearly basis thereafter.

(6) Effective July 1, 1989, the department shall offer hospice services in accordance with available funds. The hospice benefit under this section shall terminate on June 30, 1993, unless extended by the legislature. [1991 1st sp.s. c 8 § 9. Prior: 1991 c 233 § 1; 1991 c 119 § 1; prior: 1990 c 33 § 594; 1990 c 25 § 1; prior: 1989 c 427 § 10; 1989 c 400 § 3; 1985 c 5 § 3; 1982 1st ex.s. c 19 § 4; 1981 1st ex.s. c 6 § 21; 1981 c 8 § 20; 1979 c 141 § 344; 1969 ex.s. c 173 § 11; 1967 ex.s. c 30 § 5.]

Effective date—1991 1st sp.s. c 8: See note following RCW 18.51.050.

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

Severability—1989 c 427: See RCW 74.39.900.

Intent—1989 c 400: See note following RCW 28A.150.390.

Effective date—1982 1st ex.s. c 19: See note following RCW 74.09.035.

Effective date—**Severability**—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.09.524 Medical assistance—Reimbursement to schools for services for handicapped children. The department of social and health services and the superintendent of public instruction shall jointly develop a process and plan to enable school districts to bill medical assistance for eligible services included in handicapped education programs, subject to the restrictions and limitations of RCW 28A.150.390, 74.09.520, and 74.09.524. The process shall be implemented during the 1990–91

school year, with the intent that the billing system be in operation in selected regions of the state during the first half of that school year. The billing system shall be extended state-wide prior to the beginning of the 1991-92 school year. The planning shall include:

(1) Consideration of the types of services provided by school districts that would be eligible for medical assistance, and whether the state's medical assistance plan should be expanded to cover additional services for children;

(2) Establishment of categories of eligible services and the rates of reimbursement;

(3) Development of a state-wide billing system for use by school districts and educational service districts, which may include phased expansion of the system, providing billing services to the various regions of the state in stages;

(4) Measures for accountability and auditing of billings;

(5) Information bulletins and workshops for school districts and educational service districts;

(6) Contracting with educational service districts or other organizations for billing services or for other assistance in implementing the process established under this section;

(7) Formal agreements between the department and the superintendent of public instruction for notification of payments and for interagency reimbursement under RCW 28A.150.390; and

(8) Review and approval of the plan by the office of financial management prior to submission to the legislature of the report under section 5, chapter 33, Laws of 1990. [1990 c 33 § 595; 1989 c 400 § 4.]

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

Intent—1989 c 400: See note following RCW 28A.150.390.

74.09.700 Medical care—Limited casualty program. (1) To the extent of available funds and subject to any conditions placed on appropriations made for this purpose, medical care may be provided under the limited casualty program to persons not otherwise eligible for medical assistance or medical care services who are medically needy as defined in the social security Title XIX state plan and medical indigents in accordance with eligibility requirements established by the department. The eligibility requirements may include minimum levels of incurred medical expenses. This includes residents of nursing facilities and residents of intermediate care facilities for the mentally retarded who are aged, blind, or disabled as defined in Title XVI of the federal social security act and whose income exceeds three hundred percent of the federal supplement security income benefit level.

(2) Determination of the amount, scope, and duration of medical coverage under the limited casualty program shall be the responsibility of the department, subject to the following:

(a) Only the following services may be covered:

(i) For persons who are medically needy as defined in the social security Title XIX state plan: Inpatient and outpatient hospital services;

(ii) For persons who are medically needy as defined in the social security Title XIX state plan, and for persons who are medical indigents under the eligibility requirements established by the department: Rural health clinic services; physicians' and clinic services; prescribed drugs, dentures, prosthetic devices, and eyeglasses; nursing facility services; and intermediate care facility services for the mentally retarded; home health services; other laboratory and x-ray services; rehabilitative services, including occupational therapy; medically necessary transportation; and other services for which funds are specifically provided in the omnibus appropriations act;

(b) Medical care services provided to the medically indigent and received no more than seven days prior to the date of application shall be retroactively certified and approved for payment on behalf of a person who was otherwise eligible at the time the medical services were furnished: PROVIDED, That eligible persons who fail to apply within the seven-day time period for medical reasons or other good cause may be retroactively certified and approved for payment.

(3) The department shall establish standards of assistance and resource and income exemptions. All non-exempt income and resources of limited casualty program recipients shall be applied against the cost of their medical care services. [1991 1st sp.s. c 9 § 7; 1991 1st sp.s. c 8 § 10; 1991 c 233 § 2; 1989 c 87 § 3; 1985 c 5 § 4; 1983 1st ex.s. c 43 § 1; 1982 1st ex.s. c 19 § 1; 1981 2nd ex.s. c 10 § 6; 1981 2nd ex.s. c 3 § 6; 1981 1st ex.s. c 6 § 22.]

Reviser's note: This section was amended by 1991 1st sp.s. c 8 § 10 and by 1991 1st sp.s. c 9 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—1991 1st sp.s. c 9: See note following RCW 82.65.010.

Effective date—1991 1st sp.s. c 8: See note following RCW 18.51.050.

Effective dates—1989 c 87: See note following RCW 11.94.050.

Effective date—1983 1st ex.s. c 43: "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 on July 1, 1983." [1983 1st ex.s. c 43 § 3.]

Effective date—1982 1st ex.s. c 19: See note following RCW 74.09.035.

Severability—1981 2nd ex.s. c 3: See note following RCW 74.09.510.

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.09.730 Disproportionate share hospital adjustment. In establishing Title XIX payments for inpatient hospital services:

(1) The department of social and health services shall provide a disproportionate share hospital adjustment considering the following components:

(a) A low-income care component based on a hospital's medicaid utilization rate, its low-income utilization rate, its provision of obstetric services, and other factors authorized by federal law;

(b) A medical indigency care component based on a hospital's services to persons who are medically indigent; and

(c) A state-only component, to be paid from available state funds to hospitals that do not qualify for federal payments under (b) of this subsection, based on a hospital's services to persons who are medically indigent;

(2) The payment methodology for disproportionate share hospitals shall be specified by the department in regulation. [1991 1st sp.s. c 9 § 8; 1989 c 260 § 1; 1987 1st ex.s. c 5 § 20.]

Effective dates—1991 1st sp.s. c 9: See note following RCW 82.65.010.

Severability—1987 1st ex.s. c 5: See note following RCW 70.47.901.

74.09.731 Disproportionate share hospital adjustment. (1) In addition to the components in RCW 74.09.730, the department of social and health services shall consider the following components in providing disproportionate share hospital adjustments:

(a) A medicaid care component proportionately based on a hospital's services to persons who are eligible for medicaid; and

(b) A state-only component, to be paid from available state funds to hospitals that do not qualify for federal payments under (a) of this subsection, based on a hospital's services to persons who are eligible for medicaid.

(2) Each in-state hospital that provides care to medicaid beneficiaries shall be eligible for payments under either subsection (1) (a) or (b) of this section.

(3) This section shall expire on the expiration date of RCW 82.65.010 through 82.65.040. [1991 1st sp.s. c 9 § 9.]

Effective dates—1991 1st sp.s. c 9: See note following RCW 82.65.010.

74.09.750 Recodified as RCW 43.20B.140. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

74.09.790 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 74.09.760 through 74.09.820 and 74.09.510:

(1) "At-risk eligible person" means an eligible person determined by the department to need special assistance in applying for and obtaining maternity care, including pregnant women who are substance abusers, pregnant and parenting adolescents, pregnant minority women, and other eligible persons who need special assistance in gaining access to the maternity care system.

(2) "County authority" means the board of county commissioners, county council, or county executive having the authority to participate in the maternity care access program or its designee. Two or more county authorities may enter into joint agreements to fulfill the requirements of this chapter.

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

(4) "Eligible person" means a woman in need of maternity care or a child, who is eligible for medical assistance pursuant to this chapter or the prenatal care program administered by the department.

(5) "Maternity care services" means inpatient and outpatient medical care, case management, and support services necessary during prenatal, delivery, and postpartum periods.

(6) "Support services" means, at least, public health nursing assessment and follow-up, health and childbirth education, psychological assessment and counseling, outreach services, nutritional assessment and counseling, needed vitamin and nonprescriptive drugs, transportation, and child care. Support services may include alcohol and substance abuse treatment for pregnant women who are addicted or at risk of being addicted to alcohol or drugs to the extent funds are made available for that purpose. [1990 c 151 § 4; 1989 1st ex.s. c 10 § 4.]

Chapter 74.13

CHILD WELFARE SERVICES

Sections

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Consistency required in administration of statutes applicable to runaway youth, at-risk youth, and families in conflict: RCW 43.20A.770.

74.13.031 Duties of department—Child welfare services—Children's services advisory committee. The department shall have the duty to provide child welfare services as defined in RCW 74.13.020, and shall:

(1) Develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of homeless, runaway, dependent, or neglected children.

(2) Develop a recruiting plan for recruiting an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of

ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, and annually submit the plan for review to the house and senate committees on social and health services. The plan shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) Investigate complaints of neglect, abuse, or abandonment of children, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency: PROVIDED, That an investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime may have been committed, the department shall notify the appropriate law enforcement agency.

(4) Offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(5) Monitor out-of-home placements, on a timely and routine basis, to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010, and annually submit a report delineating the results to the house and senate committees on social and health services.

(6) Have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) Have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) 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.

(9) Establish a children's services advisory committee which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, day care, licensing of child care agencies, adoption, and services related thereto. At least one-third of the membership shall be composed of child care providers, and at least one member shall represent the adoption community.

(10) Have authority to provide continued foster care or group care for individuals from eighteen through

twenty years of age to enable them to complete their high school or vocational school program.

(11) Have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and RCW 74.13.032 through 74.13.036, or of this section all services to be provided by the department of social and health services under subsections (4), (6), and (7) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974. [1990 c 146 § 9. Prior: 1987 c 505 § 69; 1987 c 170 § 10; 1983 c 246 § 4; 1982 c 118 § 3; 1981 c 298 § 16; 1979 ex.s. c 165 § 22; 1979 c 155 § 77; 1977 ex.s. c 291 § 22; 1975-'76 2nd ex.s. c 71 § 4; 1973 1st ex.s. c 101 § 2; 1967 c 172 § 17.]

Effective date—1987 c 170 §§ 10 and 11: "Sections 10 and 11 of this act shall take effect July 1, 1988." [1987 c 170 § 16.]

Severability—1987 c 170: See note following RCW 13.04.030.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—**Severability**—1977 ex.s. c 291: See notes following RCW 13.04.005.

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

Abuse of child or adult dependent person: Chapter 26.44 RCW.

Licensing of agencies caring for or placing children, expectant mothers, and developmentally disabled persons: Chapter 74.15 RCW.

74.13.034 Crisis residential centers—Removal to another center—Placement in secure juvenile detention facility—Legislative intent. (1) A child taken into custody and taken to a crisis residential center established pursuant to RCW 74.13.032(2) may, if the center is unable to provide appropriate treatment, supervision, and structure to the child, be taken at department expense to another crisis residential center or the nearest regional crisis residential center. Placement in both centers shall not exceed seventy-two hours from the point of intake as provided in RCW 13.32A.130.

(2) A child taken into custody and taken to a crisis residential center established by this chapter may be placed physically by the department or the department's designee and, at departmental expense and approval, in a secure juvenile detention facility operated by the county in which the center is located for a maximum of forty-eight hours, including Saturdays, Sundays, and holidays, if the child has taken unauthorized leave from the center and the person in charge of the center determines that the center cannot provide supervision and structure adequate to ensure that the child will not again take unauthorized leave. Juveniles placed in such a facility pursuant to this section may not, to the extent possible, come in contact with alleged or convicted juvenile or adult offenders.

(3) Any child placed in secure detention pursuant to this section shall, during the period of confinement, be provided with appropriate treatment by the department or the department's designee, which shall include the services defined in RCW 74.13.033(2). If the child placed in secure detention is not returned home or if an alternative living arrangement agreeable to the parent and the child is not made within twenty-four hours after the child's admission, the child shall be taken at the department's expense to a crisis residential center. Placement in the crisis residential center or centers plus placement in juvenile detention shall not exceed seventy-two hours from the point of intake as provided in RCW 13.32A.130.

(4) Juvenile detention facilities used pursuant to this section shall first be certified by the department to ensure that juveniles placed in the facility pursuant to this section are provided with living conditions suitable to the well-being of the child. Where space is available, juvenile courts, when certified by the department to do so, shall provide secure placement for juveniles pursuant to this section, at department expense.

(5) It is the intent of the legislature that by July 1, 1982, crisis residential centers, supplemented by community mental health programs and mental health professionals, will be able to respond appropriately to children admitted to centers under this chapter and will be able to respond to the needs of such children with appropriate treatment, supervision, and structure. [1991 c 364 § 5; 1981 c 298 § 17; 1979 ex.s. c 165 § 21; 1979 c 155 § 80.]

Conflict with federal requirements—1991 c 364: See note following RCW 70.96A.020.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—**Severability**—1979 c 155: See notes following RCW 13.04.011.

Child admitted to crisis residential center—*Maximum hours of detention*—*Reconciliation effort*—*Information to parents upon retaining custody*—*Written statement of services and rights*: RCW 13.32A.130.

74.13.045 Complaint resolution process. The department shall develop and implement an informal, nonadversarial complaint resolution process to be used by clients of the department, foster parents, and other affected individuals who have complaints regarding a department policy or procedure, or the application of such a policy or procedure, related to programs administered under this chapter. The process shall not apply in circumstances where the complainant has the right under Title 13, 26, or 74 RCW to seek resolution of the complaint through judicial review or through an adjudicative proceeding.

Nothing in this section shall be construed to create substantive or procedural rights in any person. Participation in the complaint resolution process shall not entitle any person to an adjudicative proceeding under chapter 34.05 RCW or to superior court review. Participation in the process shall not affect the right of any person to seek other statutorily or constitutionally permitted remedies.

The department shall develop procedures to assure that clients and foster parents are informed of the availability of the complaint resolution process and how to access it. The department shall incorporate information regarding the complaint resolution process into the training for foster parents and caseworkers.

The department shall compile complaint resolution data including the nature of the complaint and the outcome of the process. The department shall submit semi-annual reports, due January and July of each year, beginning July 1992, to the senate children and family services committee and the house of representatives human services committee. [1991 c 340 § 2.]

Intent—1991 c 340: "It is the intent of the legislature to provide timely, thorough, and fair procedures for resolution of grievances of clients, foster parents, and the community resulting from decisions made by the department of social and health services related to programs administered pursuant to this chapter. Grievances should be resolved at the lowest level possible. However, all levels of the department should be accountable and responsible to individuals who are experiencing difficulties with agency services or decisions. It is the intent of the legislature that grievance procedures be made available to individuals who do not have other remedies available through judicial review or adjudicative proceedings." [1991 c 340 § 1.]

74.13.075 At-risk juvenile sex offenders—Expenditure of funds. (1) For the purposes of funds appropriated for the treatment of at-risk juvenile sex offenders, "at-risk juvenile sex offenders" means those juveniles in the care and custody of the state who:

- (a) Have been abused; and
- (b) Have committed a sexually aggressive or other violent act that is sexual in nature; or
- (c) Cannot be detained under the juvenile justice system due to being under age twelve and incompetent to stand trial for acts that could be prosecuted as sex offenses as defined by RCW 9.94A.030 if the juvenile was over twelve years of age, or competent to stand trial if under twelve years of age.

(2) In expending these funds, the department of social and health services shall establish in each region a case review committee to review all cases for which the funds are used. In determining whether to use these funds in a particular case, the committee shall consider:

- (a) The age of the juvenile;
- (b) The extent and type of abuse to which the juvenile has been subjected;
- (c) The juvenile's past conduct;
- (d) The benefits that can be expected from the treatment; and
- (e) The cost of the treatment. [1990 c 3 § 305.]

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

74.13.0903 Child care resources coordinator. The office of the child care resources coordinator is established to operate under the authority of the department of social and health services. The office shall, within appropriated funds:

- (1) Staff and assist the child care coordinating committee in the implementation of its duties under RCW 74.13.090;

(2) Work with local governments, nonprofit organizations, businesses, and community child care advocates to create local child care resource and referral organizations. These organizations may carry out needs assessments, resource development, provider training, technical assistance, and parent information and training;

(3) Actively seek public and private money for distribution as grants to potential or existing local child care resource and referral organizations. After the 1991–93 fiscal biennium, no grant shall be distributed that is greater than twenty-five thousand dollars;

(4) Adopt rules regarding the application for and distribution of grants to local child care resource and referral organizations. The rules shall, at a minimum, require an applicant to submit a plan for achieving the following objectives:

(a) Provide parents with information about child care resources, including location of services and subsidies;

(b) Carry out child care provider recruitment and training programs;

(c) Offer support services, such as parent and provider seminars, toy-lending libraries, and substitute banks;

(d) Provide information for businesses regarding child care supply and demand;

(e) Advocate for increased public and private sector resources devoted to child care; and

(f) Provide technical assistance to employers regarding employee child care services;

(5) Provide staff support and technical assistance to local child care resource and referral organizations;

(6) Organize the local child care resource and referral organizations into a state-wide system;

(7) Maintain a state-wide child care referral data bank and work with department of social and health services licensors to provide information to local child care resource and referral organizations about licensed child care providers in the state;

(8) Through local resource and referral organizations, compile data about local child care needs and availability for future planning and development;

(9) Coordinate the provision of training and technical assistance to child care providers; and

(10) Collect and assemble information regarding the availability of insurance and of federal and other child care funding to assist state and local agencies, businesses, and other child care providers in offering child care services. [1991 1st sp.s. c 16 § 924; 1989 c 381 § 5.]

Severability—Effective date—1991 1st sp.s. c 16: See notes following RCW 9.46.100.

Findings—Severability—1989 c 381: See notes following RCW 74.13.085.

74.13.109 Rules and regulations—Agreements for disbursements from appropriations available from the general fund, criteria. The secretary shall issue rules and regulations to assist in the administration of the program of adoption support authorized by RCW 26.33.320 and 74.13.100 through 74.13.145.

Disbursements from the appropriations available from the general fund 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 eighteen 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 eighteen years of age warrants the continuation of support pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 the secretary may do so, subject to all the provisions of RCW 26.33.320 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 has the character, judgment, sense of responsibility, and disposition which make him or her suitable as an adoptive parent of such child. [1990 c 285 § 7; 1985 c 7 § 135; 1982 c 118 § 4; 1979 ex.s. c 67 § 8; 1971 ex.s. c 63 § 4.]

Findings—Purpose—Severability—1990 c 285: See notes following RCW 74.04.005.

Severability—1979 ex.s. c 67: See note following RCW 19.28.330.

74.13.130 Nonrecurring adoption expenses. The secretary may authorize the payment, from the appropriations available from the general fund, of all or part of the nonrecurring adoption expenses incurred by a prospective parent. "Nonrecurring adoption expenses" means those expenses incurred by a prospective parent in connection with the adoption of a difficult to place child including, but not limited to, attorneys' fees, court costs, and agency fees. Payment shall be made in accordance with rules adopted by the department.

This section shall have retroactive application to January 1, 1987. For purposes of retroactive application, the secretary may provide reimbursement to any parent who adopted a difficult to place child between January 1, 1987, and one year following June 7, 1990, regardless of whether the parent had previously entered into an adoption support agreement with the department. [1990 c 285 § 8; 1985 c 7 § 142; 1979 ex.s. c 67 § 9; 1971 ex.s. c 63 § 11.]

Findings—Purpose—Severability—1990 c 285: See notes following RCW 74.04.005.

Severability—1979 ex.s. c 67: See note following RCW 19.28.330.

74.13.150 Adoption support reconsideration program.

(1) The department of social and health services shall establish, within funds appropriated for the purpose, a reconsideration program to provide medical and counseling services through the adoption support program for children of families who apply for services after the adoption is final. Families requesting services through the program shall provide any information requested by the department for the purpose of processing the family's application for services.

(2) A child meeting the eligibility criteria for registration with the program is one who:

(a) Was residing in foster care funded by the department immediately prior to the adoptive placement;

(b) Had a physical or mental handicap or emotional disturbance that existed and was documented prior to the adoption; and

(c) Resides in the state of Washington with an adoptive parent who lacks the necessary financial means to care for the child's special need.

(3) If a family is accepted for registration and meets the criteria in subsection (2) of this section, the department may enter into an agreement for services. Prior to entering into an agreement for services through the program, the medical needs of the child must be reviewed and approved by the department's office of personal health services.

(4) Any services provided pursuant to an agreement between a family and the department shall be met from the department's medical program. Such services shall be limited to:

(a) Services provided after finalization of an agreement between a family and the department pursuant to this section;

(b) Services not covered by the family's insurance or other available assistance; and

(c) Services related to the eligible child's identified physical or mental handicap or emotional disturbance that existed prior to the adoption.

(5) Any payment by the department for services provided pursuant to an agreement shall be made directly to the physician or provider of services according to the department's established procedures.

(6) The total costs payable by the department for services provided pursuant to an agreement shall not exceed twenty thousand dollars per child. [1990 c 285 § 5.]

Findings—Purpose—Severability—1990 c 285: See notes following RCW 74.04.005.

74.13.170 Therapeutic family home program for youth in custody under chapter 13.34 RCW. The department of social and health services may implement a therapeutic family home program for up to fifteen youth in the custody of the department under chapter 13.34 RCW. The program shall strive to develop and maintain a mutually reinforcing relationship between the youth and the therapeutic staff associated with the program. [1991 c 326 § 2.]

Part headings not law—Severability—1991 c 326: See RCW 71.36.900 and 71.36.901.

FOSTER CARE

74.13.250 Preservice training. (1) Preservice training is recognized as a valuable tool to reduce placement disruptions, the length of time children are in care, and foster parent turnover rates. Preservice training also assists potential foster parents in making their final decisions about foster parenting and assists social service agencies in obtaining information about whether to approve potential foster parents.

(2) Foster parent preservice training shall include information about the potential impact of placement on foster children; social service agency administrative processes; the requirements, responsibilities, expectations, and skills needed to be a foster parent; attachment, separation, and loss issues faced by birth parents, foster children, and foster parents; child management and discipline; birth family relationships; and helping children leave foster care. Preservice training shall assist applicants in making informed decisions about whether they want to be foster parents. Preservice training shall be designed to enable the agency to assess the ability, readiness, and appropriateness of families to be foster parents. As a decision tool, effective preservice training provides potential foster parents with enough information to make an appropriate decision, affords potential foster parents an opportunity to discuss their decision with others and consider its implications for their family, clarifies foster family expectations, presents a realistic picture of what foster parenting involves, and allows potential foster parents to consider and explore the different types of children they might serve.

(3) Preservice training shall be completed prior to the issuance of a foster care license, except that the department may, on a case by case basis, issue a written waiver that allows the foster parent to complete the training after licensure, so long as the training is completed within ninety days following licensure. [1990 c 284 § 2.]

Finding—1990 c 284: "The legislature finds that the foster care system plays an important role in preserving families and giving consistent and nurturing care to children placed in its care. The legislature further finds that foster parents play an integral and important role in the system and particularly in the child's chances for the earliest possible reunification with his or her family." [1990 c 284 § 1.]

Effective date—1990 c 284: "This act shall take effect July 1, 1990, however the secretary may immediately take any steps necessary to ensure implementation of section 17 of this act on July 1, 1990." [1990 c 284 § 27.] Section 17 of this act is an uncodified temporary section.

74.13.260 On-site monitoring program. Regular on-site monitoring of foster homes to assure quality care improves care provided to children in family foster care. An on-site monitoring program shall be established by the department to assure quality care and regularly identify problem areas. The department shall report to the legislature by June 1 of each year, beginning with June 1, 1991, the results of the monitoring, including identified problem areas, and make policy recommendations to improve the quality of foster care based on the results of the monitoring. Monitoring shall be done by the department on a random sample basis of no less than

ten percent of the total licensed family foster homes licensed by the department on July 1 of each year. [1990 c 284 § 4.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.270 Respite care. The legislature recognizes the need for temporary short-term relief for foster parents who care for children with emotional, mental, or physical handicaps. For purposes of this section, respite care means appropriate, temporary, short-term care for these foster children placed with licensed foster parents. The purpose of this care is to give the foster parents temporary relief from the stresses associated with the care of these foster children. The department shall design a program of respite care that will minimize disruptions to the child and will serve foster parents within these priorities, based on input from foster parents, foster parent associations, and reliable research if available. [1990 c 284 § 8.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.280 Client information. (1) Except as provided in RCW 70.24.105, whenever a child is placed in out-of-home care by the department or a child-placing agency, the department or agency may share information about the child and the child's family with the care provider and may consult with the care provider regarding the child's case plan. If the child is dependent pursuant to a proceeding under chapter 13.34 RCW, the department or agency shall keep the care provider informed regarding the dates and location of dependency review hearings pertaining to the child.

(2) Any person who receives information about a child or a child's family pursuant to this section shall keep the information confidential and shall not further disclose or disseminate the information except as authorized by law.

(3) Nothing in this section shall be construed to limit the authority of the department or child-placing agencies to disclose client information or to maintain client confidentiality as provided by law. [1991 c 340 § 4; 1990 c 284 § 10.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.290 Fewest possible placements for children. To provide stability to children in out-of-home care, placement selection shall be made with a view toward the fewest possible placements for each child. If possible, the initial placement shall be viewed as the only placement for the child. The use of short-term interim placements of thirty days or less to protect the child's health or safety while the placement of choice is being arranged is not a violation of this principle. [1990 c 284 § 11.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.300 Notification of proposed placement changes. (1) Whenever a child has been placed in a foster family home by the department or a child-placing agency and the child has thereafter resided in the home for at least ninety consecutive days, the department or child-placing agency shall notify the foster family at least five days prior to moving the child to another placement, unless:

(a) A court order has been entered requiring an immediate change in placement;

(b) The child is being returned home;

(c) The child's safety is in jeopardy; or

(d) The child is residing in a receiving home or a group home.

(2) If the child has resided in a foster family home for less than ninety days or if, due to one or more of the circumstances in subsection (1) of this section, it is not possible to give five days' notification, the department or child-placing agency shall notify the foster family of proposed placement changes as soon as reasonably possible.

(3) This section is intended solely to assist in minimizing disruption to the child in changing foster care placements. Nothing in this section shall be construed to require that a court hearing be held prior to changing a child's foster care placement nor to create any substantive custody rights in the foster parents. [1990 c 284 § 12.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.310 Foster parent training. Adequate foster parent training has been identified as directly associated with increasing the length of time foster parents are willing to provide foster care and reducing the number of placement disruptions for children. Placement disruptions can be harmful to children by denying them consistent and nurturing support. Foster parents have expressed the desire to receive training in addition to the foster parent SCOPE training currently offered. Foster parents who care for more demanding children, such as children with severe emotional, mental, or physical handicaps, would especially benefit from additional training. The department shall develop additional training for foster parents that focuses on skills to assist foster parents in caring for emotionally, mentally, or physically handicapped children. [1990 c 284 § 13.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.320 Recruitment of foster homes and adoptive homes for special needs children. The legislature finds that during the fiscal years 1987 to 1989 the number of children in foster care has risen by 14.3 percent. At the same time there has been a 31 percent turnover rate in foster homes because many foster parents have declined to continue to care for foster children. This situation has caused a dangerously critical shortage of foster homes.

The department of social and health services shall develop and implement a project to recruit more foster homes and adoptive homes for special needs children by

developing a request for proposal to licensed private foster care, licensed adoption agencies, and other organizations qualified to provide this service.

The project shall consist of one state-wide administrator of recruitment programs, and one or more licensed foster care or adoption agency contracts in each of the six departmental regions. These contracts shall enhance currently provided services and may not replace services currently funded by the agencies. No more than sixty thousand dollars may be spent annually to fund the administrator position.

The agencies shall recruit foster care homes and adoptive homes for children classified as special needs children under chapter 74.08 RCW. The agencies shall utilize their own network of contacts and shall also develop programs similar to those used effectively in other states. The department shall expand the foster-adopt program state-wide to encourage stable placements for foster children for whom permanent out-of-home placement is a likelihood. The department shall carefully consider existing programs to eliminate duplication of services.

The department shall assist the private contractors by providing printing services for informational brochures and other necessary recruitment materials. No more than fifty thousand dollars of the funds provided for this section may be expended annually for recruitment materials. [1990 c 284 § 15.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.330 Responsibilities of foster parents. Foster parents are responsible for the protection, care, supervision, and nurturing of the child in placement. As an integral part of the foster care team, foster parents shall, if appropriate and they desire to: Participate in the development of the service plan for the child and the child's family; assist in family visitation, including monitoring; and model effective parenting behavior for the natural family. [1990 c 284 § 23.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

Chapter 74.14B CHILDREN'S SERVICES

Sections

- 74.14B.060 Sexually abused children—Treatment services.
- 74.14B.070 Child victims of sexual assault or sexual abuse—
Early identification, treatment.
- 74.14B.080 Liability insurance for foster parents.

74.14B.060 Sexually abused children—Treatment services. (1) The department of social and health services through its division of children and family services shall provide, subject to available funds, comprehensive sexual assault services to sexually abused children. The department shall provide treatment by licensed professionals on a one-to-one or group basis as may be deemed appropriate.

(2) Funds appropriated under this section shall be provided solely for contracts or direct purchase of specific treatment services from community organizations and private service providers for child victims of sexual assault and sexual abuse. Funds shall be disbursed through the request for proposal or request for qualifications process.

(3) As part of the request for proposal or request for qualifications process the department of social and health services shall ensure that there be no duplication of services with existing programs including the crime victims' compensation program as provided in chapter 7.68 RCW. The department shall also ensure that victims exhaust private insurance benefits available to the child victim before providing services to the child victim under this section. [1990 c 3 § 1402.]

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

74.14B.070 Child victims of sexual assault or sexual abuse—Early identification, treatment. The department of social and health services through its division of children and family services shall, subject to available funds, establish a system of early identification and referral to treatment of child victims of sexual assault or sexual abuse. The system shall include schools, physicians, sexual assault centers, domestic violence centers, child protective services, and foster parents. A mechanism shall be developed to identify communities that have experienced success in this area and share their expertise and methodology with other communities state-wide. [1990 c 3 § 1403.]

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

74.14B.080 Liability insurance for foster parents. (1) Subject to subsection (2) of this section, the secretary of social and health services shall provide liability insurance to foster parents licensed under chapter 74.15 RCW. The coverage shall be for personal injury and property damage caused by foster parents or foster children that occurred while the children were in foster care. Such insurance shall cover acts of ordinary negligence but shall not cover illegal conduct or bad faith acts taken by foster parents in providing foster care. Moneys paid from liability insurance for any claim are limited to the amount by which the claim exceeds the amount available to the claimant from any valid and collectible liability insurance.

(2) The secretary of social and health services may purchase the insurance required in subsection (1) of this section or may choose a self-insurance method. The total moneys expended pursuant to this authorization shall not exceed five hundred thousand dollars per biennium. If the secretary elects a method of self-insurance, the expenditure shall include all administrative and staff costs. If the secretary elects a method of self-insurance, he or she may, by rule, place a limit on the maximum amount to be paid on each claim.

(3) Nothing in this section or RCW 4.24.590 is intended to modify the foster parent reimbursement plan in place on July 1, 1991.

(4) The liability insurance program shall be available by July 1, 1991. [1991 c 283 § 2.]

Findings—1991 c 283: "The legislature recognizes the unique legal risks that foster parents face in taking children into their care. Third parties have filed claims against foster parents for losses and damage caused by foster children. Additionally, foster children and their parents have sued foster parents for actions occurring while the children were in foster care. The legislature finds that some potential foster parents are unwilling to subject themselves to potential liability without insurance protection. The legislature further finds that to encourage those people to serve as foster parents, it is necessary to assure that such insurance is available to them." [1991 c 283 § 1.]

Effective date—1991 c 283: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 283 § 5.]

Chapter 74.15

AGENCIES FOR CARE OF CHILDREN, EXPECTANT MOTHERS, DEVELOPMENTALLY DISABLED

Sections

74.15.020	Definitions. (Effective January 1, 1992.)
74.15.060	Health protection—Powers and duties of secretary of health.
74.15.110	Renewal of licenses.

Liability insurance for foster parents: RCW 74.14B.080.

Liability of foster parents: RCW 4.24.590.

74.15.020 Definitions. (Effective January 1, 1992.)
For the purpose of chapter 74.15 RCW and RCW 74.13.031, and unless otherwise clearly indicated by the context thereof, the following terms shall mean:

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

(2) "Secretary" means the secretary of social and health services;

(3) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers, or persons with developmental disabilities 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 persons with developmental disabilities 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 persons with developmental disabilities for services rendered:

(a) "Group-care facility" means an agency, other than a foster-family home, 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;

(e) "Foster-family home" means an agency which regularly provides care on a twenty-four hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed;

(f) "Crisis residential center" means an agency which is a temporary protective residential facility operated to perform the duties specified in chapter 13.32A RCW, in the manner provided in RCW 74.13.032 through 74.13.036.

(4) "Agency" shall not include the following:

(a) Persons related by blood or marriage to the child, expectant mother, or persons with developmental disabilities 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 persons with developmental disabilities;

(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) A person, partnership, corporation, or other entity that provides placement or similar services to exchange students or international student exchange visitors;

(e) 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;

(f) 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;

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

(h) 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;

(i) Licensed physicians or lawyers;

(j) 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;

(k) Facilities approved and certified under chapter 71A.22 RCW;

(l) 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;

(m) Persons who have a child in their home for purposes of adoption, if the child was placed in such home by a licensed child-placing agency, an authorized public or tribal agency or court or if a replacement report has been filed under chapter 26.33 RCW and the placement has been approved by the court;

(n) An agency operated by any unit of local, state, or federal government or an agency, located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;

(o) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter.

(5) "Requirement" means any rule, regulation or standard of care to be maintained by an agency. [1991 c 128 § 14; 1988 c 176 § 912; 1987 c 170 § 12; 1982 c 118 § 5; 1979 c 155 § 83; 1977 ex.s. c 80 § 71; 1967 c 172 § 2.]

Severability—Effective date—1991 c 128: See RCW 19.166.900 and 19.166.901.

Severability—1988 c 176: See RCW 71A.10.900.

Severability—1987 c 170: See note following RCW 13.04.030.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

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

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

In consultation with the children's services 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 and RCW 74.13.031, necessary to promote the health of all persons residing therein.

The secretary of health or the city, county, or district health department designated by the secretary 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 of social and health services before a license shall be issued, except that a provisional license may be issued as provided in RCW 74.15.120. [1991 c 3 § 376; 1989 1st ex.s. c 9 § 265; 1987 c 524 § 14; 1982 c 118 § 9; 1970 ex.s. c 18 § 14; 1967 c 172 § 6.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.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 except that a request for renewal of a foster family home license shall be filed prior to the expiration 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. [1991 c 14 § 1; 1967 c 172 § 11.]

Chapter 74.18

DEPARTMENT OF SERVICES FOR THE BLIND

Sections

74.18.230 Business enterprises revolving account.

74.18.230 Business enterprises revolving account. (1) There is established in the state treasury an account known as the business enterprises revolving account.

(2) The net proceeds from any vending machine operation in a public building, other than an operation managed by a licensee, shall be made payable to the business enterprises revolving fund. Net proceeds, for purposes of this section, means the gross amount received less the costs of the operation, including a fair minimum return to the vending machine owner, 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 development and expansion of locations, equipment, management services, and payments to licensees in the business enterprises program.

(4) The business enterprises program shall be supported by the business enterprises revolving fund and by income which may accrue to the department pursuant to the federal Randolph-Sheppard Act.

(5) Vocational rehabilitation funds may be spent in connection with the business enterprises program for training persons to become licensees and for other services that are required to complete an individual written rehabilitation program. [1991 1st sp.s. c 13 §§ 19, 116. Prior: 1985 c 97 § 2; 1985 c 57 § 72; 1983 c 194 § 23.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Effective date—1985 c 57: See note following RCW 15.52.320.

Chapter 74.20

SUPPORT OF DEPENDENT CHILDREN

Sections

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 or prosecuting attorney.

74.20.310 Guardian ad litem in actions brought to determine parent and child relationship—Notice.

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 a county with a population of one million or more 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 inter-county 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. [1991 c 363 § 150; 1969 ex.s. c 173 § 14; 1963 c 206 § 6.]

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

74.20.220 Powers of department through the attorney general or prosecuting attorney. In order to carry out its responsibilities imposed under this chapter and as required by federal law, the state department of social and health services, through the attorney general or prosecuting attorney, is hereby authorized to:

(1) Initiate an action in superior court to obtain a support order or obtain other relief related to support for a dependent child on whose behalf the department is providing public assistance or support enforcement services under RCW 74.20.040, or to enforce a superior court order.

(2) Appear as a party in dissolution, child support, parentage, maintenance suits, or other proceedings, for the purpose of representing the financial interest and actions of the state of Washington therein.

(3) Petition the court for modification of a superior court order when the office of support enforcement is providing support enforcement services under RCW 74.20.040.

(4) When the attorney general or prosecuting attorney appears in, defends, or initiates actions to establish, modify, or enforce child support obligations he or she represents the state, the best interests of the child relating to parentage, and the best interests of the children of the state, but does not represent the interests of any other individual.

(5) 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 or prosecuting attorney 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 or her failure to comply with any order of support previously entered.

(6) 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.

(7) Nothing in this section limits the authority of the attorney general or prosecuting attorney to use any and all civil and criminal remedies to enforce, establish, or modify child support obligations whether or not the custodial parent receives public assistance. [1991 c 367 § 44; 1979 c 141 § 367; 1973 1st ex.s. c 154 § 112; 1969 ex.s. c 173 § 15; 1963 c 206 § 7.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

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

74.20.310 Guardian ad litem in actions brought to determine parent and child relationship—Notice. (1) The provisions of RCW 26.26.090 requiring appointment of a general guardian or guardian ad litem to represent the child in an action brought to determine the parent and child relationship do not apply to actions brought under chapter 26.26 RCW if:

(a) The action is brought by the attorney general on behalf of the department of social and health services and the child; or

(b) The action is brought by any prosecuting attorney on behalf of the state and the child when referral has been made to the prosecuting attorney by the department of social and health services requesting such action.

(2) On the issue of parentage, the attorney general or prosecuting attorney functions as the child's guardian ad litem provided the interests of the state and the child are not in conflict.

(3) The court, on its own motion or on motion of a party, may appoint a guardian ad litem when necessary.

(4) The summons shall contain a notice to the parents that the parents have a right to move the court for a guardian ad litem for the child other than the prosecuting attorney or the attorney general subject to subsection (2) of this section. [1991 c 367 § 45; 1979 ex.s. c 171 § 15.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

Chapter 74.20A

SUPPORT OF DEPENDENT CHILDREN— ALTERNATIVE METHOD—1971 ACT

Sections

74.20A.020 Definitions.
74.20A.055 Notice and finding of financial responsibility of responsible parent—Service—Hearing—Decisions.

- 74.20A.059 Modification of administrative orders establishing child support—Petition—Grounds—Procedure.
 74.20A.095 Support enforcement services—Action against earnings within state—Notice.

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 and chapter 74.20 RCW 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:

(a) Under the age of eighteen who is not self-supporting, married, or a member of the armed forces of the United States; or

(b) Over the age of eighteen for whom a court order for support exists.

(4) "Support obligation" means the obligation to provide for the necessary care, support, and maintenance, including medical expenses, of a dependent child or other person as required by statutes and the common law of this or another state.

(5) "Superior court order" means any judgment, decree, or order of the superior court of the state of Washington, or a court of comparable jurisdiction of another state, establishing the existence of a support obligation and ordering payment of a set or determinable amount of support moneys to satisfy the support obligation. For purposes of RCW 74.20A.055, orders for support which were entered under the uniform reciprocal enforcement of support act by a state where the responsible parent no longer resides shall not preclude the department from establishing an amount to be paid as current and future support.

(6) "Administrative order" means any determination, finding, decree, or order for support pursuant to RCW 74.20A.055, or by an agency of another state pursuant to a substantially similar administrative process, establishing the existence of a support obligation and ordering the payment of a set or determinable amount of support moneys to satisfy the support obligation.

(7) "Responsible parent" means a natural parent, adoptive parent, or stepparent of a dependent child or a person who has signed an affidavit acknowledging paternity which has been filed with the state office of vital statistics.

(8) "Stepparent" means the present spouse of the person who is either the mother, father, or adoptive parent of a dependent child, and such status shall exist until terminated as provided for in RCW 26.16.205.

(9) "Support moneys" means any moneys or in-kind providings paid to satisfy a support obligation whether denominated as child support, spouse support, alimony, maintenance, or any other such moneys intended to satisfy an obligation for support of any person or satisfaction in whole or in part of arrears or delinquency on such an obligation.

(10) "Support debt" means any delinquent amount of support moneys which is due, owing, and unpaid under a

superior court order or an administrative order, a debt for the payment of expenses for the reasonable or necessary care, support, and maintenance, including medical expenses, of a dependent child or other person for whom a support obligation is owed; or a debt under RCW 74.20A.100 or 74.20A.270. Support debt also includes any accrued interest, fees, or penalties charged on a support debt, and attorneys fees and other costs of litigation awarded in an action to establish and enforce a support obligation or debt.

(11) "State" means any state or political subdivision, territory, or possession of the United States, the District of Columbia, and the commonwealth of Puerto Rico. [1990 1st ex.s. c 2 § 15. Prior: 1989 c 175 § 151; 1989 c 55 § 1; 1985 c 276 § 4; 1979 ex.s. c 171 § 3; 1971 ex.s. c 164 § 2.]

Effective date—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

Birth certificate—Establishing paternity: RCW 70.58.080.

74.20A.055 Notice and finding of financial responsibility of responsible parent—Service—Hearing—

Decisions. (1) The secretary may, in the absence of a superior court order, serve on the responsible parent or parents a notice and finding of financial responsibility requiring a responsible parent or parents to appear and show cause in an adjudicative proceeding 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. The hearing shall be held pursuant to this section, chapter 34.05 RCW, the Administrative Procedure Act, and the rules of the department.

(2) 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 or may be served on the responsible parent by certified mail, return receipt requested. The receipt shall be prima facie evidence of service. The notice shall be served upon the debtor within sixty days from the date the state assumes responsibility for the support of the dependent child or children on whose behalf support is sought. If the notice is not served within sixty days from such date, the department shall lose the right to reimbursement of payments made after the sixty-day period and before the date of notification: **PROVIDED**, That if the department exercises reasonable efforts to locate the debtor and is unable to do so the entire sixty-day period is tolled until such time as the debtor can be located.

(3) 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 periodic payments to be made in the future. The notice and finding shall also include:

(a) A statement of the name of the recipient or custodian and the name of the child or children for whom support is sought;

(b) A statement of the amount of periodic future support payments as to which financial responsibility is alleged;

(c) A statement that the responsible parent may object to all or any part of the notice and finding, and file an application for an adjudicative proceeding to show cause why said responsible parent should not be determined to be liable for any or all of the debt, past and future;

(d) A statement that, if the responsible parent fails in timely fashion to file an application for an adjudicative proceeding, 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 and amounts due under the notice shall be subject to collection action;

(e) 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, order to withhold and deliver, notice of payroll deduction or other collection action to satisfy the debt and enforce the support obligation established under the notice.

(4) A responsible parent who objects to the notice and finding of financial responsibility may file an application for an adjudicative proceeding within twenty days of the date of service of the notice or thereafter as provided under this subsection. An adjudicative proceeding shall be held in the county of residence or other place convenient to the responsible parent.

(a) If the responsible parent files the application within twenty days, the department shall schedule an adjudicative proceeding to hear the parent's objection and determine the parents' support obligation for the entire period covered by the notice and finding of financial responsibility. The filing of the application stays collection action pending the entry of a final administrative order;

(b) If the responsible parent fails to file an application within twenty days, the notice and finding shall become a final administrative order. The amounts for current and future support and the support debt stated in the notice are final and subject to collection, except as provided under (c) and (d) of this subsection;

(c) If the responsible parent files the application more than twenty days after, but within one year of the date of service, the department shall schedule an adjudicative proceeding to hear the parents' objection and determine the parent's support obligation for the entire period covered by the notice and finding of financial responsibility. The filing of the application does not stay further collection action, pending the entry of a final administrative order, and does not affect any prior collection action;

(d) If the responsible parent files the application more than one year after the date of service, the department shall schedule an adjudicative proceeding at which the responsible parent must show good cause for failure to file a timely application. The filing of the application

does not stay future collection action and does not affect prior collection action:

(i) If the presiding officer finds that good cause exists, the presiding officer shall proceed to hear the parent's objection to the notice and determine the parent's support obligation;

(ii) If the presiding officer finds that good cause does not exist, the presiding officer shall treat the application as a petition for prospective modification of the amount for current and future support established under the notice and finding. In the modification proceeding, the presiding officer shall set current and future support under chapter 26.19 RCW. The responsible parent need show neither good cause nor a substantial change of circumstances to justify modification of current and future support;

(e) The department shall retain and/or shall not refund support money collected more than twenty days after the date of service of the notice. Money withheld as the result of collection action shall be delivered to the department. The department shall distribute such money, as provided in published rules.

(5) If an application for an adjudicative proceeding is filed, the presiding or reviewing officer shall determine the past liability and responsibility, if any, of the alleged responsible parent and shall also determine the amount of periodic payments to be made in the future, which amount is not limited by the amount of any public assistance payment made to or for the benefit of the child. If deviating from the child support schedule in making these determinations, the presiding or reviewing officer shall apply the standards contained in the child support schedule and enter written findings of fact supporting the deviation.

(6) If the responsible parent fails to attend or participate in the hearing or other stage of an adjudicative proceeding, upon a showing of valid service, the presiding officer shall enter an administrative 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.

(7) The final administrative order 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 administrative order.

(8) Debts determined pursuant to this section, accrued and not paid, are subject to collection action under this chapter without further necessity of action by a presiding or reviewing officer. [1991 c 367 § 46; 1990 1st ex.s. c 2 § 21; 1989 c 175 § 152; 1988 c 275 § 10; 1982 c 189 § 8; 1979 ex.s. c 171 § 12; 1973 1st ex.s. c 183 § 25.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.

Effective date—1989 c 175: See note following RCW 34.05.010.

Effective dates—Severability—1988 c 275: See notes following RCW 26.19.001.

Effective date—1982 c 189: See note following RCW 34.12.020.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.059 Modification of administrative orders establishing child support—Petition—Grounds—Procedure. (1) The department, the physical custodian, or the responsible parent may petition for a prospective modification of a final administrative order if:

(a) The administrative order has not been superseded by a superior court order; and

(b) There has been a substantial change of circumstances, except as provided under RCW 74.20A.055(4)(d).

(2) An order of child support may be modified one year or more after it has been entered without showing a substantial change of circumstances:

(a) If the order in practice works a severe economic hardship on either party or the child; or

(b) If a party requests an adjustment in an order for child support that was based on guidelines which determined the amount of support according to the child's age, and the child is no longer in the age category on which the current support amount was based; or

(c) If a child is a full-time student and reasonably expected to complete secondary school or the equivalent level of vocational or technical training before the child becomes nineteen years of age upon a finding that there is a need to extend support beyond the eighteenth birthday.

(3) An order may be modified without showing a substantial change of circumstances if the requested modification is to:

(a) Require health insurance coverage for a child covered by the order; or

(b) Modify an existing order for health insurance coverage.

(4) Support orders may be adjusted once every twenty-four months based upon changes in the income of the parents without a showing of substantially changed circumstances.

(5)(a) All administrative orders entered on, before, or after September 1, 1991, may be modified based upon changes in the child support schedule established in chapter 26.19 RCW without a substantial change of circumstances. The petition may be filed based on changes in the child support schedule after twelve months has expired from the entry of the administrative order or the most recent modification order setting child support, whichever is later. However, if a party is granted relief under this provision, twenty-four months must pass before another petition for modification may be filed pursuant to subsection (4) of this section.

(b) If, pursuant to subsection (4) of this section or (a) of this subsection, the order modifies a child support obligation by more than thirty percent and the change would cause significant hardship, the change may be implemented in two equal increments, one at the time of the entry of the order and the second six months from the entry of the order. Twenty-four months must pass following the second change before a petition for modification under subsection (4) of this section may be filed.

(6) An increase in the wage or salary of the parent or custodian who is receiving the support transfer payments

as defined in *section 24 of this act is not a substantial change in circumstances for purposes of modification under subsection (1)(b) of this section. An obligor's voluntary unemployment or voluntary underemployment, by itself, is not a substantial change of circumstances.

(7) The department shall file the petition and a supporting affidavit with the secretary or the secretary's designee when the department petitions for modification.

(8) The responsible parent or the physical custodian shall follow the procedures in this chapter for filing an application for an adjudicative proceeding to petition for modification.

(9) Upon the filing of a proper petition or application, the secretary or the secretary's designee shall issue an order directing each party to appear and show cause why the order should not be modified.

(10) If the presiding or reviewing officer finds a modification is appropriate, the officer shall modify the order and set current and future support under chapter 26.19 RCW. [1991 c 367 § 47.]

***Reviser's note:** "Section 24 of this act" was vetoed by the governor.

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

74.20A.095 Support enforcement services—Action against earnings within state—Notice. When providing support enforcement services, the office of support enforcement may take action, under this chapter and chapter 26.23 RCW, against a responsible parent's earnings, located in, or subject to the jurisdiction of, the state of Washington regardless of the presence or residence of the responsible parent. If the responsible parent resides in another state or country, the office of support enforcement shall serve a notice under RCW 74.20A-.040 more than sixty days before taking collection action. [1991 c 367 § 48.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

Chapter 74.21

FAMILY INDEPENDENCE PROGRAM

Sections

74.21.020	Intent.
74.21.030	Definitions.
74.21.040	Eligibility for benefits.
74.21.050	Family independence program—Executive committee—Advisory committee—Records—Quorum.
74.21.070	Executive committee—Powers and duties.
74.21.190	Enrollee participation in work, training, and education activities—Criteria.

74.21.020 Intent. The legislature hereby establishes as state policy the goal of economic independence for employable adults receiving public assistance, through employment, training, and education. The legislature finds that children living in families with incomes below the needs standard have reduced opportunities for physical and intellectual development. A family's economic future is frequently not improved by the current program.

Therefore, in order to break the cycle of poverty and dependence, a family independence program is established. Participating families are to receive benefits under this program at no less than they would otherwise have been entitled to receive.

The legislature intends that the family independence program is operated as a demonstration, which shall be periodically reviewed and modified by the executive committee to further state policy and to manage the program within resources.

The legislature finds that the state has a vital interest in ensuring that citizens who are in economic need are provided appropriate financial assistance. It is the intent of the legislature to maintain the existing partnership between state and federal government and that this program remain part of the federal welfare entitlement program. The legislature seeks federal authority for a five-year demonstration project and recognizes that waivers and congressional action may be required to achieve our purpose. The legislature does not seek a block grant approach to welfare.

The legislature recognizes that any program intended to assist new and current public assistance recipients will be more likely to succeed when the state, private sector, and recipients work together.

The legislature also recognizes the value of building on successful programs that utilize the development of networking and mentoring strategies to assist public assistance recipients to gain self-sufficiency. The legislature further encourages public-private cooperation in the areas of job readiness training, education, job training, and work opportunities, including community-based organizations as service providers in these areas through contractual relationships.

The legislature finds that the goal of economic independence requires increased efforts to assist parents in exercising their children's right to economic support from absent parents.

The legislature recognizes the substantial participation in the workforce of women with preschool children, and the difficulty in reentering employment after long absences.

The legislature further recognizes that public assistance recipients can play a major role in setting their own goals.

The objectives of this chapter are to assure that: The maximum number of recipients of public assistance become independent and self-sufficient through employment, training, and education; caseloads be correspondingly reduced on a long-term basis; financial incentives be available to recipients participating in job readiness, education, training, and work programs; the number of children growing up in poverty be substantially reduced; and unemployable recipients be afforded a basic level of financial and medical assistance consistent with the state's financial capabilities. [1990 1st ex.s. c 6 § 1; 1988 c 43 § 2; 1987 c 434 § 2.]

Severability—1990 1st ex.s. c 6: "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." [1990 1st ex.s. c 6 § 7.]

Application—1990 1st ex.s. c 6: "The modifications to the family independence program contained in this act shall be implemented only to the extent permitted by federal law or agreements with the federal government made prior or subsequent to the effective date of this act [April 2, 1990]." [1990 1st ex.s. c 6 § 8.]

74.21.030 Definitions. Unless the context requires to the contrary, the definitions in this section apply throughout this chapter.

(1) "Benchmark standard" is the basic monthly level of cash benefits, established according to family size, which equals the state's payment standard under the aid to families with dependent children program, plus an amount not less than the full cash equivalent of food stamps for which any family of such size would otherwise be eligible.

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

(3) "Enrollee" means the head(s) of household of a family eligible to receive financial assistance or other services under the family independence program.

(4) "Executive committee" or "committee" means the family independence program executive committee, authorized by and subject to the provisions of this chapter, to make policy recommendations to the legislature and develop procedure, program standards, data collection and information systems for family independence programs, including making budget allocations, setting incentive rates within appropriated funds, setting cost-sharing requirements for child care and medical services, and making related financial reports under chapter 43-.88 RCW.

(5) "Family independence program services" include but are not limited to job readiness programs, job creation, employment, work programs, training, education, family planning services, development of a mentor program, income and medical support, parent education, child care, and training in family responsibility and family management skills, including appropriate financial counseling and training on management of finances and use of credit.

(6) "Food stamps" means the food purchase benefit available through the United States department of agriculture.

(7) "Gross income" means the total income of an enrollee from earnings, cash assistance, and incentive benefit payments.

(8) "Incentive benefit payments" means those additional benefits payable to enrollees due to their participation in education, training, or work programs.

(9) "Job-ready" is the status of an enrollee who is assessed as ready to enter job search activities on the basis of the enrollee's skills, experience, or participation in job and education activities in accordance with RCW 74.21.080.

(10) "Job readiness training" means that training necessary to enable enrollees to participate in job search or job training classes. It may include any or all of the following: Budgeting and financial counseling, time management, self-esteem building, expectations of the workplace (including appropriate dress and behavior on

the job), goal setting, transportation logistics, and other preemployment skills.

(11) "Maximum income levels" are those levels of income and cash benefits, both benchmark and incentive, which the state establishes as the maximum level of total gross cash income for persons to continue to receive cash benefits.

(12) "Medical benefits" or "medicaid" are categorically or medically needy medical benefits provided in accordance with Title XIX of the federal social security act. Eligibility and scope of medical benefits under this chapter shall incorporate any hereinafter enacted changes in the medicaid program under Title XIX of the federal social security act.

(13) "Noncash benefits" includes benefits such as child care and medicaid where the family receives a service in lieu of a cash payment related to the purposes of the family independence program.

(14) "Payment standard" is equal to the standard of need or a lesser amount if rateable reductions or grant maximums are established by the legislature. Standard of need shall be based on periodic studies of actual living costs and generally recognized inflation indices and shall include reasonable allowances for shelter, fuel, food, transportation, clothing, household maintenance, and necessary incidentals. The standard of need may take into account the economies of joint living arrangements, but there shall not be proration of any portion of assistance grants unless the amount of the payment standard is equal to the standard of need.

(15) "Subsidized employment" means employment for which the family independence program has provided the employer the financial resources, in whole or in part, to compensate an enrollee for the performance of work.

(16) "Unsubsidized employment" means employment for which the family independence program has not provided the employer the financial resources to compensate an enrollee for the performance of work.

(17) "Treatment site" means the five sites chosen in accordance with federal standards for data collection by the independent evaluator contracted for under this chapter. [1990 1st ex.s. c 6 § 2; 1989 c 11 § 27; 1987 c 434 § 3.]

Severability—Application—1990 1st ex.s. c 6: See notes following RCW 74.21.020.

Severability—1989 c 11: See note following RCW 9A.56.220.

74.21.040 Eligibility for benefits. (1) Upon implementation of the family independence program, all applicants for public assistance, except persons eligible for assistance under the general assistance—unemployable program and except for families in which the children residing with caretakers other than the children's parents are the only individuals eligible for benefits, under chapter 74.04 RCW, shall be enrolled in the family independence program and shall be eligible to receive financial and medical benefits under the following criteria:

(a) A person who is a "dependent child" as defined in 42 U.S.C. Sec. 606(a) or 42 U.S.C. Sec. 607(a), the

caretaker relative(s) with whom the dependent child resides, or a pregnant woman as defined in 42 U.S.C. Sec. 606(b); and

(b) A person whose resources do not exceed those established by the United States department of health and human services at 45 C.F.R. Sec. 233.20(a)(3)(i)(B); and

(c) A person whose income does not exceed the benchmark standard plus appropriate incentive benefit payments established in accordance with this chapter. However, subject to subsection (2) of this section and RCW 74.21.180, the department may limit family independence program eligibility to exclude those new applicants whose monthly income would render them ineligible for aid to families with dependent children benefits under the payment level in effect at the time of the application. For the purposes of this subsection, a new applicant is a person who has not been a recipient of aid to families with dependent children or an enrollee for ninety days prior to application.

(2) Subject to the availability of funds for family independence program benefits, the department may expand eligibility to authorize family independence program benefits for additional categories of persons, but the department shall ensure that no person who would be eligible for benefits under the program requirements in place in this state as of January 1, 1988, pursuant to Titles IV–A and XIX of the federal social security act shall be denied financial or medical benefits under this chapter.

(3) The executive committee is authorized to transfer cases from the family independence program to the aid for families with dependent children program in circumstances where the dependent children residing with caretakers other than the children's parents are the only individuals eligible for benefits under chapter 74.04 RCW. [1990 1st ex.s. c 6 § 3; 1987 c 434 § 4.]

Severability—Application—1990 1st ex.s. c 6: See notes following RCW 74.21.020.

74.21.050 Family independence program—Executive committee—Advisory committee—Records—Quorum. (1) The family independence program executive committee is hereby established.

(2) The executive committee shall consist of seven members as follows: The secretary of social and health services, the commissioner of the employment security department, the senior official from each of those agencies who is responsible for the family independence program, an official of the office of financial management, and two nonvoting individuals who have received public assistance in the past but have subsequently achieved economic independence. The former recipient members of the executive committee shall be selected by the advisory committee. The former recipient representatives on the committee shall hold a term of two years. Terms may be renewed for one additional two-year term. The former recipient representatives shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(3) The executive committee shall appoint and consult with an advisory committee of not less than ten or more than twenty members broadly representative of business, labor, education, community, enrollee, civic groups, and the public at large. The membership shall be geographically balanced with one-third of the membership composed of enrollees or community members in accordance with RCW 74.21.060. The advisory committee members shall serve terms of two years. In addition, the speaker of the house of representatives and the president of the senate shall appoint a member of each caucus of the legislature to the advisory committee.

The initial terms of the advisory committee members shall be staggered in a manner determined by the executive committee. In the event of a vacancy on the advisory committee due to death, resignation, or removal of one of the advisory committee members, and upon the expiration of the term of any member, the executive committee shall appoint a successor from a list supplied by the family opportunity councils for a term expiring on the second anniversary of the successor's date of the appointment, except that vacancies in a position appointed by a legislative officer shall be filled by that officer. Advisory committee members may be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(4) If any one of the state offices on the executive committee is abolished, the resulting vacancy on the executive committee shall be filled by the state officer who shall succeed substantially to the power and duties of the abolished office.

(5) The secretary of social and health services shall serve as chairperson of the executive committee and shall supervise all staff and program functions not under the direct supervision of the employment security department. The commissioner of the employment security department shall serve as vice-chairperson. The executive committee shall appoint a secretary who need not be a member of the executive committee.

(6) The secretary of the executive committee shall keep a record of the proceedings of the committee meetings.

(7) Three members of the executive committee constitute a quorum. The executive committee may act on the basis of motions. Motions shall be adopted upon the affirmative vote of a majority of a quorum of members present at any meeting of the executive committee. A vacancy in the membership of the committee does not impair the power of the committee to act under this chapter. However, in the case of a vacancy in one of the offices which constitutes the membership of the committee, the individual acting in the capacity of that officer shall also act as a member of the committee.

(8) The executive committee shall consult with the advisory committee on significant matters before taking action on such matters. Matters of significance include but are not limited to the nature and extent of contracts with private or nonprofit entities, decisions to modify incentive payments, and a right to review and comment

upon the employment and child care plans and all reports submitted to the legislature, prior to their submission. The meetings of the executive committee are subject to chapter 42.30 RCW, the open public meetings act. The advisory committee shall study approaches to allow children in poverty to grow up healthy with self-confidence and the ability to break the cycle of dependence that can result from inadequate nutrition, housing, and other basic needs. [1990 1st ex.s. c 6 § 4; 1987 c 434 § 5.]

Severability—Application—1990 1st ex.s. c 6: See notes following RCW 74.21.020.

74.21.070 Executive committee—Powers and duties. (1) The executive committee shall direct the employment security department and the department of social and health services, or the appropriate successor agencies, subject to the provisions of this chapter and consistent with available funds, to do the following in order to accomplish the purposes of this chapter:

(a) To carry out and ensure the development of job readiness training, job development activities, subsidize employment in or through public, private, volunteer, and nonprofit agencies, and provide training funds for enrollees prior to and during employment;

(b) To carry out training and education activities as set forth in RCW 74.21.080;

(c) To allow enrollees, consistent with available appropriations, to receive the incentive benefit payments while attending higher education and vocational institutions;

(d) To fund other related family services, including, but not limited to, child care services for enrollees who participate in the education, training, and work programs authorized by the executive committee;

(e) To receive federal and state funds for the family independence program and to otherwise manage the program so as to operate within legislatively determined funding limitations. However, the executive committee has no authority to alter the benchmark standard established by the legislature;

(f) To periodically review administration data and evaluation reports and to modify program operations in accordance with state and federal law. Such modifications shall not conflict with waiver agreements between the state and federal agencies and shall be made only after consultation with the legislative budget committee;

(g) To determine the level and types of program benefits and incentive benefit payments in accordance with this chapter, together with specific administrative requirements to be met by program enrollees;

(h) To authorize other individuals served under aid to families with dependent children—regular and employable to voluntarily seek enrollee status;

(i) To establish rules for the treatment of earnings and unearned income by enrollees as set forth in RCW 74.21.180;

(j) To establish administrative sanctions consistent with the criteria set forth in RCW 74.21.150(3) which may be applied to enrollees and the conditions under which program benefits may be reduced or terminated;

(k) To establish due process procedures as set forth in RCW 74.21.110;

(l) To establish the conditions under which child care and other related social services, including parent education and counseling, will be provided, subject to the following: Any child care provided under this chapter shall be in accordance with statutory child day care licensure requirements;

(m) To provide child care without cost to enrollees whose income is below the maximum authorized income level;

(n) To establish copayment requirements for noncash benefits as set forth in RCW 74.21.100;

(o) To establish the conditions and terms under which the department may enter into contracts with the public, private, and not-for-profit sectors to provide:

(i) Parenting education for parents;

(ii) Job readiness training;

(iii) Training of state agency employees to work with enrollees in developing plans for self-sufficiency, which include but are not limited to the employability, training, and education plans;

(iv) The development of mentoring programs to provide assistance to current recipients through the use of former recipients; and

(v) Facilitation of family opportunity councils in the geographical areas sited for implementation of the program;

(p) To establish the conditions and terms, and to enter into contracts, under which public, private, and not-for-profit sector jobs will be created and financed by the executive committee and the circumstances under which training for employees or potential employees of public, private, and for-profit employers will be subsidized through the family independence program;

(q) To establish the terms and provisions under which training and job development services may be extended to the absent parent(s) of the children of enrollees;

(r) To establish the frequency and method for re-determining eligibility;

(s) To undertake the acquisition of all such services authorized in this chapter on an exempt basis, as provided in RCW 43.19.1901, from the public bid requirements of RCW 43.19.190 through 43.19.200;

(t) To establish a proposed schedule by geographic area for implementation of the family independence program, which shall be submitted to the legislature by January 1, 1988. The executive committee is authorized to periodically stop enrollments in family independence program sites, except for the five treatment sites, for the purpose of managing resources, until such time as sufficient funds become available to reopen enrollments. Until the family independence program is implemented in a particular geographic area, applicants in that area shall continue to be eligible for benefits under the aid to families with dependent children program and shall have a right to convert to the family independence program when it is available in that area in accordance with rules adopted by the executive committee;

(u) To determine methods of administration and do all other things necessary to carry out the purposes of this chapter.

(2) The executive committee with assistance from the appropriate agencies shall promulgate rules in accordance with chapter 34.05 RCW in order to accomplish the purposes of this chapter. Policy decisions of the executive committee that require rule-making shall not be final until the adoption of the necessary rules. [1990 1st ex.s. c 6 § 5; 1987 c 434 § 7.]

Severability—Application—1990 1st ex.s. c 6: See notes following RCW 74.21.020.

74.21.190 Enrollee participation in work, training, and education activities—Criteria. (1) All enrollees shall register for assessment to evaluate the appropriateness of work, education, or training options for that individual.

(2) For those enrollees who seek to pursue work, training, and education activities, and for those enrollees who are required in accordance with this chapter to so participate, the state agencies and the enrollee shall jointly develop an employability plan which sets forth the participation activity or sequence of activities and the available supportive services. In some instances, the plan may require additional assessment. The plan is subject to the approval of the state agencies. An enrollee may seek a modification of the employability plan, or an administrative review if mutual agreement cannot be achieved.

(3) All enrollees who are employed full time whose earnings are less than one hundred thirty-five percent of the benchmark standard shall be identified at their next annual eligibility review. Enrollees so identified shall participate in an employability reassessment to determine if the employment is reasonably likely to move the enrollee into noncash benefit status within a year. Plan approval shall be suspended under rules adopted in accordance with this chapter if a determination is made jointly by the family independence program case coordinator and the job service specialist that the employment is not reasonably likely to move the enrollee into non-cash benefit status within one year. Plan suspension shall not affect the enrollee's right to program benefits or incentive benefits except in accordance with this section. Periodic services shall be offered to enrollees with suspended self-sufficiency plans to assist them to obtain employment reasonably likely to assist them in attaining self-sufficiency. Enrollees who continue employment under a suspended plan for one year shall receive notice within thirty days that they will lose their right to receive family independence program benefits and incentive payments, unless their plan is approved within six months: **PROVIDED**, That a termination of program benefits and incentive payments shall not result in an enrollee's receiving less assistance than the enrollee would be eligible for under the aid to families with dependent children program.

(4) Appropriate child care and other social services shall be available to enable an enrollee to participate in work, training, or education activities.

(5) Prior to the determination that a mandatory enrollee has refused to cooperate, efforts must be made at conciliation of the dispute consistent with 45 C.F.R. Sec. 224.63.

(6) The agencies shall adopt rules setting forth criteria that provide good cause for an enrollee's refusal to participate in or accept a specific assignment of proposed work, education, or training activities. The criteria shall include, but need not be limited to, the following:

(a) No suitable child care is available without cost to the enrollee;

(b) The assignment is not within the scope of the enrollee's employability plan;

(c) The assignment would have an adverse effect on the physical or mental health of the enrollee;

(d) The distance of the assignment from the enrollee's home makes participation impracticable;

(e) The assignment would result in a loss of income to the enrollee's family;

(f) Exigent personal or family circumstances would interfere with successful participation in the assignment;

(g) The assignment involves conditions which are in violation of applicable health and safety regulations;

(h) The assignment would interrupt a program in process at the undergraduate or vocational level which is reasonably expected to result in economic self-sufficiency; or

(i) The best interests of a child or children in the family would be served by the parent providing full or part-time care in the home due to the particular personal or family circumstances of the enrollee's family. [1990 1st ex.s. c 6 § 6; 1987 c 434 § 19.]

Severability—Application—1990 1st ex.s. c 6: See notes following RCW 74.21.020.

Chapter 74.22

WORK INCENTIVE PROGRAM FOR RECIPIENTS OF PUBLIC ASSISTANCE

Sections

74.22.010 through 74.22.120 Repealed.

74.22.010 through 74.22.120 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 74.23

WORK INCENTIVE PROGRAM FOR RECIPIENTS OF AID TO FAMILIES WITH DEPENDENT CHILDREN

Sections

74.23.005 through 74.23.120 Repealed.
74.23.900 Repealed.

74.23.005 through 74.23.120 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

74.23.900 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 74.25

JOB OPPORTUNITIES AND BASIC SKILLS TRAINING PROGRAM

Sections

74.25.010	State policy—Legislative findings.
74.25.020	Authority and responsibility of department—Contracts authorized—Priority—Good cause for failure to participate—Rules.
74.25.030	Interpretation of laws.
74.25.900	Conflict with federal requirements.
74.25.901	Severability.

74.25.010 State policy—Legislative findings. The legislature establishes as state policy the goal of economic self-sufficiency for employable recipients of public assistance, through employment, training, and education. In furtherance of this policy, the legislature intends to comply with the requirements of the federal social security act, as amended, by creating a job opportunities and basic skills training program for applicants and recipients of aid to families with dependent children. The purpose of this program is to provide recipients of aid to families with dependent children the opportunity to obtain a full range of necessary education, training, skills, and supportive services, including child care, consistent with their needs, that will help them enter or re-enter gainful employment, thereby avoiding long-term welfare dependence and achieving economic self-sufficiency. The program shall be operated by the department of social and health services in conformance with federal law and consistent with the following legislative findings:

(1) The legislature finds that the well-being of children depends not only on meeting their material needs, but also on the ability of parents to become economically self-sufficient. The job opportunities and basic skills training program is specifically directed at increasing the household earnings of aid to families with dependent children recipients, through the removal of barriers preventing them from achieving self-sufficiency. These barriers include, but are not limited to, the lack of supportive services such as affordable and reliable child care, adequate transportation, appropriate counseling, and necessary job-related tools, equipment, books, clothing, and supplies, the absence of basic literacy skills, the lack of educational attainment sufficient to meet labor market demands for career employees, and the nonavailability of useful labor market assessments.

(2) The legislature also recognizes that aid to families with dependent children recipients must be acknowledged as active participants in self-sufficiency planning under the program. The legislature finds that the department of social and health services should communicate concepts of personal empowerment, self-motivation, and self-esteem to program participants. The legislature further recognizes that informed choice is consistent

with individual responsibility, and that parents should be given a range of options for available child care while participating in the program.

(3) The legislature finds that education, including, but not limited to, literacy, high school equivalency, vocational, secondary, and postsecondary, is one of the most important tools an individual needs to achieve full independence, and that this should be an important component of the program.

(4) The legislature further finds that the objectives of this program are to assure that aid to families with dependent children recipients achieve financial stability and an adequate standard of living at wages that will meet family needs. [1991 c 126 § 5.]

74.25.020 Authority and responsibility of department—Contracts authorized—Priority—Good cause for failure to participate—Rules. (1) The department of social and health services is authorized to contract with public and private employment and training agencies and other public service entities to provide services prescribed or allowed under the federal social security act, as amended, to carry out the purposes of the jobs training program. The department of social and health services has sole authority and responsibility to carry out the job opportunities and basic skills training program. No contracting entity shall have the authority to review, change, or disapprove any administrative decision, or otherwise substitute its judgment for that of the department of social and health services as to the application of policies and rules adopted by the department of social and health services.

(2) To the extent feasible under federal law, the department of social and health services and all entities contracting with it shall give first priority of service to individuals volunteering for program participation.

(3) The department of social and health services shall adopt rules under chapter 34.05 RCW establishing criteria constituting circumstances of good cause for an individual failing or refusing to participate in an assigned program component, or failing or refusing to accept or retain employment. These criteria shall include, but not be limited to, the following circumstances: (a) If the individual is a parent or other relative personally providing care for a child under age six years, and the employment would require the individual to work more than twenty hours per week; (b) if child care, or day care for an incapacitated individual living in the same home as a dependent child, is necessary for an individual to participate or continue participation in the program or accept employment, and such care is not available, and the department of social and health services fails to provide such care; (c) the employment would result in the family of the participant experiencing a net loss of cash income; or (d) circumstances that are beyond the control of the individual's household, either on a short-term or on an ongoing basis.

(4) The department of social and health services shall adopt rules under chapter 34.05 RCW as necessary to effectuate the intent and purpose of this chapter. [1991 c 126 § 6.]

74.25.030 Interpretation of laws. Any section or provision of law dealing with the job opportunities and basic skills training program that may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to comply with federal laws entitling the state to receive federal funds. [1991 c 126 § 7.]

74.25.900 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 agency concerned. [1991 c 126 § 8.]

74.25.901 Severability. 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. [1991 c 126 § 9.]

Chapter 74.38

SENIOR CITIZENS SERVICES ACT

Sections

74.38.070 Reduced utility rates for low income senior citizens and low income disabled citizens.

74.38.070 Reduced utility rates for low income senior citizens and low income disabled citizens. (1) Notwithstanding any other provision of law, any county, city, town, municipal corporation, or quasi municipal corporation providing utility services may provide such services at reduced rates for low income senior citizens or low income disabled citizens: PROVIDED, That, for the purposes of this section, "low income senior citizen" or "low income disabled citizen" shall be defined by appropriate ordinance or resolution adopted by the governing body of the county, city, town, municipal corporation, or quasi municipal corporation providing the utility services except as provided in subsection (2) of this section. Any reduction in rates granted in whatever manner to low income senior citizens or low income disabled citizens in one part of a service area shall be uniformly extended to low income senior citizens or low income disabled citizens in all other parts of the service area.

(2) For purposes of implementing this section by any public utility district, (a) "low income senior citizen" means a person who is sixty-two years of age or older and whose total income, including that of his or her spouse or cotenant, does not exceed the amount specified in RCW 84.36.381(5)(b), as now or hereafter amended and (b) "low income disabled citizen" means (i) a person qualifying for special parking privileges under RCW 46.16.381(1) (a) through (f), (ii) a blind person as defined in RCW 74.18.020, or (iii) a disabled, handicapped, or incapacitated person as defined under any

other existing state or federal program and whose income, including that of his or her spouse or cotenant, does not exceed the amount specified in RCW 70.164.020(4). [1990 c 164 § 1; 1988 c 44 § 1; 1980 c 160 § 1; 1979 c 116 § 1.]

Chapter 74.42

NURSING HOMES—RESIDENT CARE, OPERATING STANDARDS

Sections

74.42.610 Repealed.

74.42.610 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 74.46

NURSING HOME AUDITING AND COST REIMBURSEMENT ACT OF 1980

Sections

74.46.020 Definitions.
74.46.210 Costs of meeting standards.
74.46.360 Cost basis of land and depreciation base of depreciable assets.
74.46.380 Disposal of depreciable assets—Inactive status—Gain on sale—Recovery of reimbursement for depreciation.
74.46.410 Unallowable costs.
74.46.481 Nursing services cost center reimbursement rate.
74.46.530 Return on investment allowance—Review.
74.46.660 Conditions of participation.
74.46.700 Resident personal funds—Records—Rules.
74.46.710 through 74.46.760 Repealed.

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

(1) "Accrual method of accounting" means a method of accounting in which revenues are reported in the period when they are earned, regardless of when they are collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

(2) "Ancillary care" means those services required by the individual, comprehensive plan of care provided by qualified therapists.

(3) "Appraisal" means the process of estimating the fair market value or reconstructing the historical cost of an asset acquired in a past period as performed by a professionally designated real estate appraiser with no pecuniary interest in the property to be appraised. It includes a systematic, analytic determination and the recording and analyzing of property facts, rights, investments, and values based on a personal inspection and inventory of the property.

(4) "Arm's-length transaction" means a transaction resulting from good-faith bargaining between a buyer and seller who are not related organizations and have adverse positions in the market place. Sales or exchanges of nursing home facilities among two or more parties in

which all parties subsequently continue to own one or more of the facilities involved in the transactions shall not be considered as arm's-length transactions for purposes of this chapter. Sale of a nursing home facility which is subsequently leased back to the seller within five years of the date of sale shall not be considered as an arm's-length transaction for purposes of this chapter.

(5) "Assets" means economic resources of the contractor, recognized and measured in conformity with generally accepted accounting principles.

(6) "Bad debts" means amounts considered to be uncollectable from accounts and notes receivable.

(7) "Beds" means the number of set-up beds in the facility, not to exceed the number of licensed beds.

(8) "Beneficial owner" means:

(a) Any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:

(i) Voting power which includes the power to vote, or to direct the voting of such ownership interest; and/or

(ii) Investment power which includes the power to dispose, or to direct the disposition of such ownership interest;

(b) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the purpose or effect of divesting himself of beneficial ownership of an ownership interest or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of this chapter;

(c) Any person who, subject to subparagraph (b) of this subsection, has the right to acquire beneficial ownership of such ownership interest within sixty days, including but not limited to any right to acquire:

(i) Through the exercise of any option, warrant, or right;

(ii) Through the conversion of an ownership interest;

(iii) Pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or

(iv) Pursuant to the automatic termination of a trust, discretionary account, or similar arrangement;

except that, any person who acquires an ownership interest or power specified in subparagraphs (i), (ii), or (iii) of this subparagraph (c) with the purpose or effect of changing or influencing the control of the contractor, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the ownership interest which may be acquired through the exercise or conversion of such ownership interest or power;

(d) Any person who in the ordinary course of business is a pledgee of ownership interest under a written pledge agreement shall not be deemed to be the beneficial owner of such pledged ownership interest until the pledgee has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged ownership interest will be exercised; except that:

(i) The pledgee agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the contractor, nor in connection with any transaction having such purpose or effect, including persons meeting the conditions set forth in subparagraph (b) of this subsection; and

(ii) The pledgee agreement, prior to default, does not grant to the pledgee:

(A) The power to vote or to direct the vote of the pledged ownership interest; or

(B) The power to dispose or direct the disposition of the pledged ownership interest, other than the grant of such power(s) pursuant to a pledge agreement under which credit is extended and in which the pledgee is a broker or dealer.

(9) "Capitalization" means the recording of an expenditure as an asset.

(10) "Contractor" means an entity which contracts with the department to provide services to medical care recipients in a facility and which entity is responsible for operational decisions.

(11) "Department" means the department of social and health services (DSHS) and its employees.

(12) "Depreciation" means the systematic distribution of the cost or other basis of tangible assets, less salvage, over the estimated useful life of the assets.

(13) "Direct care supplies" means medical, pharmaceutical, and other supplies required for the direct nursing and ancillary care of medical care recipients.

(14) "Entity" means an individual, partnership, corporation, or any other association of individuals capable of entering enforceable contracts.

(15) "Equity" means the net book value of all tangible and intangible assets less the recorded value of all liabilities, as recognized and measured in conformity with generally accepted accounting principles.

(16) "Facility" means a nursing home licensed in accordance with chapter 18.51 RCW, excepting nursing homes certified as institutions for mental diseases, or that portion of a hospital licensed in accordance with chapter 70.41 RCW which operates as a nursing home.

(17) "Fair market value" means the replacement cost of an asset less observed physical depreciation on the date for which the market value is being determined.

(18) "Financial statements" means statements prepared and presented in conformity with generally accepted accounting principles including, but not limited to, balance sheet, statement of operations, statement of changes in financial position, and related notes.

(19) "Gain on sale" means the difference between the total net book value of nursing home assets, including but not limited to land, building and equipment, and the total sales price of all such assets.

(20) "Generally accepted accounting principles" means accounting principles approved by the financial accounting standards board (FASB).

(21) "Generally accepted auditing standards" means auditing standards approved by the American institute of certified public accountants (AICPA).

(22) "Goodwill" means the excess of the price paid for a business over the fair market value of all other identifiable, tangible, and intangible assets acquired.

(23) "Historical cost" means the actual cost incurred in acquiring and preparing an asset for use, including feasibility studies, architect's fees, and engineering studies.

(24) "Imprest fund" means a fund which is regularly replenished in exactly the amount expended from it.

(25) "Joint facility costs" means any costs which represent resources which benefit more than one facility, or one facility and any other entity.

(26) "Lease agreement" means a contract between two parties for the possession and use of real or personal property or assets for a specified period of time in exchange for specified periodic payments. Elimination (due to any cause other than death or divorce) or addition of any party to the contract, expiration, or modification of any lease term in effect on January 1, 1980, or termination of the lease by either party by any means shall constitute a termination of the lease agreement. An extension or renewal of a lease agreement, whether or not pursuant to a renewal provision in the lease agreement, shall be considered a new lease agreement. A strictly formal change in the lease agreement which modifies the method, frequency, or manner in which the lease payments are made, but does not increase the total lease payment obligation of the lessee, shall not be considered modification of a lease term.

(27) "Medical care program" means medical assistance provided under RCW 74.09.500 or authorized state medical care services.

(28) "Medical care recipient" or "recipient" means an individual determined eligible by the department for the services provided in chapter 74.09 RCW.

(29) "Net book value" means the historical cost of an asset less accumulated depreciation.

(30) "Net invested funds" means the net book value of tangible fixed assets employed by a contractor to provide services under the medical care program, including land, buildings, and equipment as recognized and measured in conformity with generally accepted accounting principles, plus an allowance for working capital which shall be five percent of the allowable costs of each contractor for the previous calendar year.

(31) "Operating lease" means a lease under which rental or lease expenses are included in current expenses in accordance with generally accepted accounting principles.

(32) "Owner" means a sole proprietor, general or limited partners, and beneficial interest holders of five percent or more of a corporation's outstanding stock.

(33) "Ownership interest" means all interests beneficially owned by a person, calculated in the aggregate, regardless of the form which such beneficial ownership takes.

(34) "Patient day" or "client day" means a calendar day of care which will include the day of admission and exclude the day of discharge; except that, when admission and discharge occur on the same day, one day of care shall be deemed to exist.

(35) "Professionally designated real estate appraiser" means an individual who is regularly engaged in the business of providing real estate valuation services for a fee, and who is deemed qualified by a nationally recognized real estate appraisal educational organization on the basis of extensive practical appraisal experience, including the writing of real estate valuation reports as well as the passing of written examinations on valuation practice and theory, and who by virtue of membership in such organization is required to subscribe and adhere to certain standards of professional practice as such organization prescribes.

(36) "Qualified therapist" means:

(a) An activities specialist who has specialized education, training, or experience as specified by the department;

(b) An audiologist who is eligible for a certificate of clinical competence in audiology or who has the equivalent education and clinical experience;

(c) A mental health professional as defined by chapter 71.05 RCW;

(d) A mental retardation professional who is either a qualified therapist or a therapist approved by the department who has had specialized training or one year's experience in treating or working with the mentally retarded or developmentally disabled;

(e) A social worker who is a graduate of a school of social work;

(f) A speech pathologist who is eligible for a certificate of clinical competence in speech pathology or who has the equivalent education and clinical experience;

(g) A physical therapist as defined by chapter 18.74 RCW; and

(h) An occupational therapist who is a graduate of a program in occupational therapy, or who has the equivalent of such education or training.

(37) "Questioned costs" means those costs which have been determined in accordance with generally accepted accounting principles but which may constitute disallowed costs or departures from the provisions of this chapter or rules and regulations adopted by the department.

(38) "Records" means those data supporting all financial statements and cost reports including, but not limited to, all general and subsidiary ledgers, books of original entry, and transaction documentation, however such data are maintained.

(39) "Related organization" means an entity which is under common ownership and/or control with, or has control of, or is controlled by, the contractor.

(a) "Common ownership" exists when an entity is the beneficial owner of five percent or more ownership interest in the contractor and any other entity.

(b) "Control" exists where an entity has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution, whether or not it is legally enforceable and however it is exercisable or exercised.

(40) "Restricted fund" means those funds the principal and/or income of which is limited by agreement with or direction of the donor to a specific purpose.

(41) "Secretary" means the secretary of the department of social and health services.

(42) "Title XIX" or "Medicaid" means the 1965 amendments to the social security act, P.L. 89-07, as amended.

(43) "Physical plant capital improvement" means a capitalized improvement that is limited to an improvement to the building or the related physical plant. [1991 1st sp.s. c 8 § 11; 1989 c 372 § 17; 1987 c 476 § 6; 1985 c 361 § 16; 1982 c 117 § 1; 1980 c 177 § 2.]

Effective date—1991 1st sp.s. c 8: See note following RCW 18.51.050.

Savings—1985 c 361: "This act shall not be construed as affecting any existing right acquired or any obligation or liability incurred under the statutes amended or repealed by this act or any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1985 c 361 § 20.]

74.46.210 Costs of meeting standards. All documented costs that are ordinary, necessary, and related to the care of medical care recipients and are not expressly unallowable will be allowable costs. These expenses include:

(1) Meeting licensing and certification standards;

(2) Meeting standards of providing regular room, nursing, ancillary, and dietary services, as established by department rule and regulation pursuant to chapter 211, Laws of 1979 ex. sess.; and

(3) Fulfilling accounting and reporting requirements imposed by this chapter. [1991 1st sp.s. c 8 § 14; 1980 c 177 § 21.]

Effective date—1991 1st sp.s. c 8: See note following RCW 18.51.050.

74.46.360 Cost basis of land and depreciation base of depreciable assets. (1) For all partial or whole rate periods after December 31, 1984, the cost basis of land and depreciation base of depreciable assets shall be the historical cost of the contractor or lessor, when the assets are leased by the contractor, in acquiring the asset in an arm's-length transaction and preparing it for use, less goodwill, and less accumulated depreciation, if applicable, which has been incurred during periods that the assets have been used in or as a facility by any contractor, such accumulated depreciation to be measured in accordance with subsections (2), (3), and (4) of this section and RCW 74.46.350 and 74.46.370. If the department challenges the historical cost of an asset, or if the contractor cannot or will not provide the historical costs, the department will have the department of general administration, through an appraisal procedure, determine the fair market value of the assets at the time of purchase. The cost basis of land and depreciation base of depreciable assets will not exceed such fair market value.

(2) The historical cost of depreciable and nondepreciable donated assets, or of depreciable and nondepreciable assets received through testate or intestate distribution, shall be the lesser of:

(a) Fair market value at the date of donation or death; or

(b) The historical cost base of the owner last contracting with the department, if any.

(3) Estimated salvage value of acquired, donated, or inherited assets shall be deducted from historical cost where the straight-line or sum-of-the-years' digits method of depreciation is used.

(4)(a) Where land or depreciable assets are acquired that were used in the medical care program subsequent to January 1, 1980, the cost basis or depreciation base of the assets will not exceed the net book value which did exist or would have existed had the assets continued in use under the previous contract with the department; except that depreciation shall not be assumed to accumulate during periods when the assets were not in use in or as a facility.

(b) The provisions of (a) of this subsection shall not apply to the most recent arm's-length acquisition if it occurs at least ten years after the ownership of the assets has been previously transferred in an arm's-length transaction nor to the first arm's-length acquisition that occurs after January 1, 1980, for facilities participating in the medical care program prior to January 1, 1980. The new cost basis or depreciation base for such acquisitions shall not exceed the fair market value of the assets as determined by the department of general administration through an appraisal procedure. A determination by the department of general administration of fair market value shall be final unless the procedure used to make such determination is shown to be arbitrary and capricious. For all partial or whole rate periods after July 17, 1984, this subsection is inoperative for any transfer of ownership of any asset, depreciable or nondepreciable, occurring on or after July 18, 1984, leaving (a) of this subsection to apply alone to such transfers: PROVIDED, HOWEVER, That this subsection shall apply to transfers of ownership of assets occurring prior to January 1, 1985, if the costs of such assets have never been reimbursed under medicaid cost reimbursement on an owner-operated basis or as a related-party lease: PROVIDED FURTHER, That for any contractor that can document in writing an enforceable agreement for the purchase of a nursing home dated prior to July 18, 1984, and submitted to the department prior to January 1, 1988, the cost basis of allowable land and the depreciation base of the nursing home, for rates established after July 18, 1984, shall not exceed the fair market value of the assets at the date of purchase as determined by the department of general administration through an appraisal procedure. For medicaid cost reimbursement purposes, an agreement to purchase a nursing home dated prior to July 18, 1984, is enforceable, even though such agreement contains no legal description of the real property involved, notwithstanding the statute of frauds or any other provision of law.

(c) In the case of land or depreciable assets leased by the same contractor since January 1, 1980, in an arm's-length lease, and purchased by the lessee/contractor, the lessee/contractor shall have the option:

(i) To have the provisions of subsection (b) of this section apply to the purchase; or

(ii) To have the reimbursement for property and return on investment continue to be calculated pursuant to

the provisions contained in RCW 74.46.530(1) (e) and (f) based upon the provisions of the lease in existence on the date of the purchase, but only if the purchase date meets one of the following criteria:

(A) The purchase date is after the lessor has declared bankruptcy or has defaulted in any loan or mortgage held against the leased property;

(B) The purchase date is within one year of the lease expiration or renewal date contained in the lease;

(C) The purchase date is after a rate setting for the facility in which the reimbursement rate set pursuant to this chapter no longer is equal to or greater than the actual cost of the lease; or

(D) The purchase date is within one year of any purchase option in existence on January 1, 1988.

(d) For all rate periods past or future where land or depreciable assets are acquired from a related organization, the contractor's cost basis and depreciation base shall not exceed the base the related organization had or would have had under a contract with the department.

(e) Where the land or depreciable asset is a donation or distribution between related organizations, the cost basis or depreciation base shall be the lesser of (i) fair market value, less salvage value, or (ii) the cost basis or depreciation base the related organization had or would have had for the asset under a contract with the department. [1991 1st sp.s. c 8 § 18; 1989 c 372 § 14. Prior: 1988 c 221 § 1; 1988 c 208 § 1; 1986 c 175 § 1; 1980 c 177 § 36.]

Effective date—1991 1st sp.s. c 8: See note following RCW 18.51.050.

Effective dates—1980 c 177: See RCW 74.46.901.

74.46.380 Disposal of depreciable assets—Inactive status—Gain on sale—Recovery of reimbursement for depreciation. (1) Where depreciable assets are disposed of through sale, trade-in, scrapping, exchange, theft, wrecking, or fire or other casualty, depreciation shall no longer be taken on the assets. No further depreciation shall be taken on permanently abandoned assets.

(2) Where an asset has been retired from active use but is being held for stand-by or emergency service, and the department has determined that it is needed and can be effectively used in the future, depreciation may be taken.

(3) If there is a sale of a nursing facility on or after July 1, 1991, that results in a gain on sale, the actual reimbursement for depreciation paid to the selling contractor through the medicaid reimbursement program shall be recovered by the department to the extent of any gain on sale. The purchaser is obligated to reimburse the department, whether or not the purchaser is a medicaid contractor. If the department is unable to collect from the purchaser, then the seller is responsible for reimbursing the department. The department may establish an appropriate repayment schedule to recover depreciation. If the purchaser is a medicaid contractor and the contractor does not comply with the repayment schedule established by the department, the department may deduct the recovery from the contractor's monthly medicaid payments. The department may adopt rules, as

appropriate, to insure that the principles of this section are implemented with respect to leased assets, or with respect to sales of intangibles or specific assets only. [1991 1st sp.s. c 8 § 12; 1980 c 177 § 38.]

Effective date—1991 1st sp.s. c 8: See note following RCW 18.51.050.

74.46.410 Unallowable costs. (1) Costs will be unallowable if they are not documented, necessary, ordinary, and related to the provision of care services to authorized patients.

(2) Unallowable costs include, but are not limited to, the following:

(a) Costs of items or services not covered by the medical care program. Costs of such items or services will be unallowable even if they are indirectly reimbursed by the department as the result of an authorized reduction in patient contribution;

(b) Costs of services and items provided to recipients which are covered by the department's medical care program but not included in care services established by the department under this chapter;

(c) Costs associated with a capital expenditure subject to section 1122 approval (part 100, Title 42 C.F.R.) if the department found it was not consistent with applicable standards, criteria, or plans. If the department was not given timely notice of a proposed capital expenditure, all associated costs will be unallowable up to the date they are determined to be reimbursable under applicable federal regulations;

(d) Costs associated with a construction or acquisition project requiring certificate of need approval pursuant to chapter 70.38 RCW if such approval was not obtained;

(e) Interest costs other than those provided by RCW 74.46.290 on and after the effective date of RCW 74.46.530;

(f) Salaries or other compensation of owners, officers, directors, stockholders, and others associated with the contractor or home office, except compensation paid for service related to patient care;

(g) Costs in excess of limits or in violation of principles set forth in this chapter;

(h) Costs resulting from transactions or the application of accounting methods which circumvent the principles of the cost-related reimbursement system set forth in this chapter;

(i) Costs applicable to services, facilities, and supplies furnished by a related organization in excess of the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere;

(j) Bad debts of non-Title XIX recipients. Bad debts of Title XIX recipients are allowable if the debt is related to covered services, it arises from the recipient's required contribution toward the cost of care, the provider can establish that reasonable collection efforts were made, the debt was actually uncollectible when claimed as worthless, and sound business judgment established that there was no likelihood of recovery at any time in the future;

(k) Charity and courtesy allowances;

(l) Cash, assessments, or other contributions, excluding dues, to charitable organizations, professional organizations, trade associations, or political parties, and costs incurred to improve community or public relations;

(m) Vending machine expenses;

(n) Expenses for barber or beautician services not included in routine care;

(o) Funeral and burial expenses;

(p) Costs of gift shop operations and inventory;

(q) Personal items such as cosmetics, smoking materials, newspapers and magazines, and clothing, except those used in patient activity programs;

(r) Fund-raising expenses, except those directly related to the patient activity program;

(s) Penalties and fines;

(t) Expenses related to telephones, televisions, radios, and similar appliances in patients' private accommodations;

(u) Federal, state, and other income taxes;

(v) Costs of special care services except where authorized by the department;

(w) Expenses of key-man insurance and other insurance or retirement plans not made available to all employees;

(x) Expenses of profit-sharing plans;

(y) Expenses related to the purchase and/or use of private or commercial airplanes which are in excess of what a prudent contractor would expend for the ordinary and economic provision of such a transportation need related to patient care;

(z) Personal expenses and allowances of owners or relatives;

(aa) All expenses of maintaining professional licenses or membership in professional organizations;

(bb) Costs related to agreements not to compete;

(cc) Amortization of goodwill;

(dd) Expenses related to vehicles which are in excess of what a prudent contractor would expend for the ordinary and economic provision of transportation needs related to patient care;

(ee) Legal and consultant fees in connection with a fair hearing against the department where a decision is rendered in favor of the department or where otherwise the determination of the department stands;

(ff) Legal and consultant fees of a contractor or contractors in connection with a lawsuit against the department;

(gg) Lease acquisition costs and other intangibles not related to patient care;

(hh) All rental or lease costs other than those provided in RCW 74.46.300 on and after the effective date of RCW 74.46.510 and 74.46.530;

(ii) Postsurvey charges incurred by the facility as a result of subsequent inspections under RCW 18.51.050 which occur beyond the first postsurvey visit during the certification survey calendar year;

(jj) Costs and fees otherwise allowable for legal services, whether purchased, allocated by a home office, regional office or management company, or performed by the contractor or employees of the contractor, in excess of the eighty-fifth percentile of such costs reported

by all contractors for the most recent cost report period: PROVIDED, That this limit shall not apply if a contractor has not exceeded this percentile in any of the preceding three annual cost report periods;

(kk) Costs and fees otherwise allowable for accounting and bookkeeping services, whether purchased, allocated by a home office, regional office or management company, or performed by the contractor or employees of the contractor, in excess of the eighty-fifth percentile of such costs reported by all contractors for the most recent cost report period: PROVIDED, That this limit shall not apply if a contractor has not exceeded this percentile in any of the preceding three annual cost report periods;

(ll) Compensation paid for any purchased nursing care services, including registered nurse, licensed practical nurse, and nurse assistant services, obtained through service contract arrangement in excess of the amount of compensation paid for such hours of nursing care service had they been paid at the average hourly wage, including related taxes and benefits, for in-house nursing care staff of like classification at the same nursing facility, as reported in the most recent cost report period;

(mm) For all partial or whole rate periods after July 17, 1984, costs of land and depreciable assets that cannot be reimbursed under the Deficit Reduction Act of 1984 and implementing state statutory and regulatory provisions. [1991 1st sp.s. c 8 § 15; 1989 c 372 § 2; 1986 c 175 § 3; 1983 1st ex.s. c 67 § 17; 1980 c 177 § 41.]

Effective date—1991 1st sp.s. c 8: See note following RCW 18.51.050.

Effective date—1989 c 372 § 2: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 372 § 19.] This note refers to the 1989 c 372 amendment to RCW 74.46.410.

74.46.481 Nursing services cost center reimbursement rate. (1) The nursing services cost center shall include all costs related to the direct provision of nursing and related care, including fringe benefits and payroll taxes for the nursing and related care personnel. For rates effective for state fiscal year 1984, the department shall adopt by administrative rule a definition of "related care" which shall incorporate, but not exceed services reimbursable as of June 30, 1983. For rates effective for state fiscal year 1985, the definition of related care shall include ancillary care. For rates effective after June 30, 1991, nursing services costs, as reimbursed within this chapter and as tested for reasonableness within this section, shall not include costs of any purchased nursing care services, including registered nurse, licensed practical nurse, and nurse assistant services, obtained through service contract arrangement in excess of the amount of compensation paid for such hours of nursing care service had they been paid at the average hourly wage, including related taxes and benefits, for in-house nursing care staff of like classification at the same nursing facility, as reported in the most recent cost report period.

(2) The department shall adopt by administrative rules a method for establishing a nursing services cost

center rate consistent with the principles stated in this section.

(3) Utilizing regression or other statistical technique, the department shall determine a reasonable limit on facility nursing staff taking into account facility patient characteristics. For purposes of this section, facility nursing staff refers to registered nurses, licensed practical nurses and nursing assistants employed by the facility or obtained through temporary labor contract arrangements. Effective January 1, 1988, the hours associated with the training of nursing assistants and the supervision of that training for nursing assistants shall not be included in the calculation of facility nursing staff. In selecting a measure of patient characteristics, the department shall take into account:

(a) The correlation between alternative measures and facility nursing staff; and

(b) The cost of collecting information for and computation of a measure.

If regression is used, the limit shall be set at predicted nursing staff plus 1.75 regression standard errors. If another statistical method is utilized, the limit shall be set at a level corresponding to 1.75 standard errors above predicted staffing computed according to a regression procedure.

(4) No facility shall receive reimbursement for nursing staff levels in excess of the limit, except that, if a facility was reimbursed for a nursing staff level in excess of the limit as of June 30, 1983, the facility may choose [choose] to continue to receive its June, 1983 nursing services rate plus any adjustments in rates, such as adjustments for economic trends, made available to all facilities. However, nursing staff levels established under subsection (3) of this section shall not apply to the nursing services cost center reimbursement rate for the pilot facility especially designed to meet the needs of persons living with AIDS as defined by RCW 70.24.017 and specifically authorized for this purpose under the 1989 amendment to the Washington state health plan [1989 1st ex.s. c 9]. The reasonableness limit established pursuant to this subsection shall remain in effect for the period July 1, 1983 through June 30, 1985. At that time the department may revise the measure of patient characteristics or method used to establish the limit.

(5) The department shall select an index of cost increase relevant to the nursing and related services cost area. In the absence of a more representative index, the department shall use the medical care component index as maintained by the United States bureau of labor statistics.

(6) If a facility's nursing staff level is below the limit specified in subsection (3) of this section, the department shall determine the percentage increase for all items included in the nursing services cost center between the facility's most recent cost reporting period and the next prior cost reporting period.

(a) If the percentage cost increase for a facility is below the increase in the selected index for the same time period, the facility's reimbursement rate in the nursing services cost center shall equal the facility's cost from

the most recent cost reporting period plus any allowance for inflation provided by legislative appropriation.

(b) If the percentage cost increase for a facility exceeds the increase in the selected index, the department shall limit the cost used for setting the facility's rate in the nursing services cost area to a level reflecting the increase in the selected index.

(7) If the facility's nursing staff level exceeds the reasonableness limit established in subsection (3) of this section, the department shall determine the increase for all items included in the nursing services cost center between the facility's most recent cost reporting period and the next prior cost reporting period.

(a) If the percentage cost increase for a facility is below the increase in the index selected pursuant to subsection (5) of this section, the facility's reimbursement rate in the nursing cost center shall equal the facility's cost from the most recent cost reporting period adjusted downward to reflect the limit on nursing staff, plus any allowance for inflation provided by legislative appropriation subject to the provisions of subsection (4) of this section.

(b) If the percentage cost increase for a facility exceeds the increase in the selected index, the department shall limit the cost used for setting the facility's rate in the nursing services cost center to a level reflecting the nursing staff limit and the cost increase limit, subject to the provisions of subsection (4) of this section, plus any allowance for inflation provided by legislative appropriation.

(8) Prospective rates for the nursing services cost center, for state fiscal year 1992 only, shall not be subject to the cost growth index lid in subsections (5), (6), and (7) of this section. The lid shall apply for state fiscal year 1991 rate setting and all state fiscal years subsequent to fiscal year 1992.

(9) The department is authorized to determine on a systematic basis facilities with unmet patient care service needs. The department may increase the nursing services cost center prospective rate for a facility beyond the level determined in accordance with subsection (6) of this section if the facility's actual and reported nursing staffing is one standard error or more below predicted staffing as determined according to the method selected pursuant to subsection (3) of this section and the facility has unmet patient care service needs: **PROVIDED**, That prospective rate increases authorized by this subsection shall be funded only from legislative appropriations made for this purpose and the increases shall be conditioned on specified improvements in patient care at such facilities.

(10) The department shall establish a method for identifying patients with exceptional care requirements and a method for establishing or negotiating on a consistent basis rates for such patients.

(11) The department, in consultation with interested parties, shall adopt rules to establish the criteria the department will use in reviewing any requests by a contractor for a prospective rate adjustment to be used to increase the number of nursing staff. These rules shall also specify the time period for submission and review of

staffing requests: **PROVIDED**, That a decision on a staffing request shall not take longer than sixty days from the date the department receives such a complete request. In establishing the criteria, the department may consider, but is not limited to, the following:

- (a) Increases in acuity levels of contractors' residents;
- (b) Staffing patterns for similar facilities;
- (c) Physical plant of contractor; and
- (d) Survey, inspection of care, and department consultation results. [1991 1st sp.s. c 8 § 16; 1990 c 207 § 1; 1987 c 476 § 5; 1983 1st ex.s. c 67 § 24.]

Effective date—1991 1st sp.s. c 8: See note following RCW 18.51.050.

74.46.530 Return on investment allowance—Review. (1) The department shall establish for individual facilities return on investment allowances composed of two parts: A financing allowance and a variable return allowance.

(a) The financing allowance shall be determined by multiplying the net invested funds of each facility by .10, and dividing by the contractor's total patient days. If a capitalized addition or retirement of an asset will result in a different licensed bed capacity during the ensuing period, the prior period total patient days used in computing the financing and variable return allowances shall be adjusted to the anticipated patient day level.

(b) In computing the portion of net invested funds representing the net book value of tangible fixed assets, the same assets, depreciation bases, lives, and methods referred to in RCW 74.46.330, 74.46.350, 74.46.360, 74.46.370, and 74.46.380, including owned and leased assets, shall be utilized, except that the capitalized cost of land upon which the facility is located and such other contiguous land which is reasonable and necessary for use in the regular course of providing patient care shall also be included. Subject to provisions and limitations contained in this chapter, for land purchased by owners or lessors before July 18, 1984, capitalized cost of land shall be the buyer's capitalized cost. For all partial or whole rate periods after July 17, 1984, if the land is purchased after July 17, 1984, capitalized cost shall be that of the owner of record on July 17, 1984, or buyer's capitalized cost, whichever is lower. In the case of leased facilities where the net invested funds are unknown or the contractor is unable to provide necessary information to determine net invested funds, the secretary shall have the authority to determine an amount for net invested funds based on an appraisal conducted according to RCW 74.46.360(1).

(c) In determining the variable return allowance:

(i) The department will first rank all facilities in numerical order from highest to lowest according to their average per diem allowable costs for the sum of the administration and operations and property cost centers for the previous cost report period.

(ii) The department shall then compute the variable return allowance by multiplying the appropriate percentage amounts, which shall not be less than one percent and not greater than four percent, by the total prospective rate for each facility, as determined in RCW

74.46.450 through 74.46.510. The percentage amounts will be based on groupings of facilities according to the rankings as established in (i) of this subsection (1)(c). Those groups of facilities with lower per diem costs shall receive higher percentage amounts than those with higher per diem costs.

(d) The sum of the financing allowance and the variable return allowance shall be the return on investment for each facility, and shall be added to the prospective rates of each contractor as determined in RCW 74.46.450 through 74.46.510.

(e) In the case of a facility which was leased by the contractor as of January 1, 1980, in an arm's-length agreement, which continues to be leased under the same lease agreement, and for which the annualized lease payment, plus any interest and depreciation expenses associated with contractor-owned assets, for the period covered by the prospective rates, divided by the contractor's total patient days, minus the property cost center determined according to RCW 74.46.510, is more than the return on investment allowance determined according to subsection (1)(d) of this section, the following shall apply:

(i) The financing allowance shall be recomputed substituting the fair market value of the assets as of January 1, 1982, as determined by the department of general administration through an appraisal procedure, less accumulated depreciation on the lessor's assets since January 1, 1982, for the net book value of the assets in determining net invested funds for the facility. A determination by the department of general administration of fair market value shall be final unless the procedure used to make such determination is shown to be arbitrary and capricious.

(ii) The sum of the financing allowance computed under subsection (1)(e)(i) of this section and the variable allowance shall be compared to the annualized lease payment, plus any interest and depreciation expenses associated with contractor-owned assets, for the period covered by the prospective rates, divided by the contractor's total patient days, minus the property cost center rate determined according to RCW 74.46.510. The lesser of the two amounts shall be called the alternate return on investment allowance.

(iii) The return on investment allowance determined according to subsection (1)(d) of this section or the alternate return on investment allowance, whichever is greater, shall be the return on investment allowance for the facility and shall be added to the prospective rates of the contractor as determined in RCW 74.46.450 through 74.46.510.

(f) In the case of a facility which was leased by the contractor as of January 1, 1980, in an arm's-length agreement, if the lease is renewed or extended pursuant to a provision of the lease, the treatment provided in subsection (1)(e) of this section shall be applied except that in the case of renewals or extensions made subsequent to April 1, 1985, reimbursement for the annualized lease payment shall be no greater than the reimbursement for the annualized lease payment for the last year prior to the renewal or extension of the lease.

(2) In the event that the department of health and human services disallows the application of the return on investment allowances to nonprofit facilities, the department shall modify the measurements of net invested funds used for computing individual facility return on investment allowances as follows: Net invested funds for each nonprofit facility shall be multiplied by one minus the ratio of equity funds to the net invested funds of all nonprofit facilities.

(3) Each biennium, beginning in 1985, the secretary shall review the adequacy of return on investment allowances in relation to anticipated requirements for maintaining, reducing, or expanding nursing care capacity. The secretary shall report the results of such review to the legislature and make recommendations for adjustments in the return on investment rates utilized in this section, if appropriate. [1991 1st sp.s. c 8 § 17; 1985 c 361 § 17; 1983 1st ex.s. c 67 § 28; 1981 1st ex.s. c 2 § 7; 1980 c 177 § 53.]

Effective date—1991 1st sp.s. c 8: See note following RCW 18.51.050.

Savings—1985 c 361: See note following RCW 74.46.020.

Effective dates—1983 1st ex.s. c 67; 1980 c 177: See RCW 74.46.901.

Severability—**Effective dates**—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

74.46.660 Conditions of participation. In order to participate in the prospective cost-related reimbursement system established by this chapter, the person or legal organization responsible for operation of a facility shall:

(1) Obtain a state certificate of need and/or federal capital expenditure review (section 1122) approval pursuant to chapter 70.38 RCW and Part 100, Title 42 CFR where required;

(2) Hold the appropriate current license;

(3) Hold current Title XIX certification;

(4) Hold a current contract to provide services under this chapter;

(5) Comply with all provisions of the contract and all application regulations, including but not limited to the provisions of this chapter; and

(6) Obtain and maintain medicare certification, under Title XVIII of the social security act, 42 U.S.C. Sec. 1395, as amended, for no less than fifteen percent of the facility's licensed beds. [1991 1st sp.s. c 8 § 13; 1980 c 177 § 66.]

Effective date—1991 1st sp.s. c 8: See note following RCW 18.51.050.

74.46.700 Resident personal funds—Records—Rules. Each nursing home shall establish and maintain, as a service to the resident, a bookkeeping system incorporated into the business records for all resident moneys entrusted to the contractor and received by the facility for the resident.

The department shall adopt rules to ensure that resident personal funds handled by the facility are maintained by each nursing home in a manner that is, at a

minimum, consistent with federal requirements. [1991 1st sp.s. c 8 § 19; 1980 c 177 § 70.]

Effective date—1991 1st sp.s. c 8: See note following RCW 18.51.050.

74.46.710 through 74.46.760 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Title 75

FOOD FISH AND SHELLFISH

Chapters

- 75.08 Administration.
75.10 Enforcement—Penalties.
75.12 Unlawful acts.
75.20 Construction projects in state waters.
75.25 Recreational licenses.
75.28 Commercial licenses.
75.30 License limitation programs.
75.48 Salmon enhancement facilities—Bond issue.
75.50 Salmon enhancement program.

Chapter 75.08
ADMINISTRATION

Sections

- 75.08.011 Definitions.
75.08.255 Director may take or sell fish or shellfish—Restrictions on sale of salmon.
75.08.460 Recreational fishery enhancement plan—Progress reports.

75.08.011 Definitions. As used in this title or rules of the director, unless the context clearly requires otherwise:

- (1) "Director" means the director of fisheries.
(2) "Department" means the department of fisheries.
(3) "Person" means an individual or a public or private entity or organization.
(4) "Fisheries patrol officer" means a person appointed and commissioned by the director...
(5) "Ex officio fisheries patrol officer" means a commissioned officer of a municipal, county, state, or federal agency...

(6) "To fish" and "to take" and their derivatives mean an effort to kill, injure, harass, or catch food fish or shellfish.

(7) "State waters" means all marine waters and fresh waters within ordinary high water lines and within the territorial boundaries of the state.

(8) "Offshore waters" means marine waters of the Pacific Ocean outside the territorial boundaries of the state, including the marine waters of other states and countries.

(9) "Concurrent waters of the Columbia river" means those waters of the Columbia river that coincide with the Washington-Oregon state boundary.

(10) "Resident" means a person who has for the preceding ninety days maintained a permanent abode within the state, has established by formal evidence an intent to continue residing within the state, and is not licensed to fish as a resident in another state.

(11) "Nonresident" means a person who has not fulfilled the qualifications of a resident.

(12) "Food fish" means those species of the classes Osteichthyes, Agnatha, and Chondrichthyes that shall not be fished for except as authorized by rule of the director. The term "food fish" includes all stages of development and the bodily parts of food fish species.

(13) "Shellfish" means those species of marine and freshwater invertebrates that shall not be taken except as authorized by rule of the director. The term "shellfish" includes all stages of development and the bodily parts of shellfish species.

(14) "Salmon" means all species of the genus Oncorhynchus, except those classified as game fish in Title 77 RCW, and includes:

Table with 2 columns: Scientific Name and Common Name. Rows include Oncorhynchus tshawytscha (Chinook salmon), Oncorhynchus kisutch (Coho salmon), Oncorhynchus keta (Chum salmon), Oncorhynchus gorbuscha (Pink salmon), and Oncorhynchus nerka (Sockeye salmon).

(15) "Commercial" means related to or connected with buying, selling, or bartering. Fishing for food fish or shellfish with gear unlawful for fishing for personal use, or possessing food fish or shellfish in excess of the limits permitted for personal use are commercial activities.

(16) "To process" and its derivatives mean preparing or preserving food fish or shellfish.

(17) "Personal use" means for the private use of the individual taking the food fish or shellfish and not for sale or barter.

(18) "Angling gear" means a line attached to a rod and reel capable of being held in hand while landing the fish or a hand-held line operated without rod or reel to which are attached no more than two single hooks or one artificial bait with no more than four multiple hooks.

(19) "Open season" means those times, manners of taking, and places or waters established by rule of the director for the lawful fishing, taking, or possession of food fish or shellfish. "Open season" includes the first and last days of the established time.

(20) "Emerging commercial fishery" means any commercial fishery:

(a) For food fish or shellfish so designated by rule of the director, except that no species harvested under a license limitation program contained in chapter 75.30 RCW may be designated as a species in an emerging commercial fishery.

(b) Which will include, subject to the limitation in (a) of this subsection, all species harvested for commercial purposes as of June 7, 1990, and the future commercial harvest of all other species in the waters of the state of Washington.

(21) "Experimental fishery permit" means a permit issued by the director to allow the recipient to engage in an emerging commercial fishery. [1990 c 63 § 6; 1990 c 35 § 3; 1989 c 218 § 1; 1983 1st ex.s. c 46 § 4; 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. Formerly RCW 75.04.010.]

Reviser's note: This section was amended by 1990 c 35 § 3 and by 1990 c 63 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—1990 c 35: See note following RCW 75.25.200.

75.08.255 Director may take or sell fish or shellfish—Restrictions on sale of salmon. (1) The director may take or remove any species of fish or shellfish from the waters or beaches of the state.

(2) The director may sell food fish or shellfish caught or taken during department test fishing operations.

(3) The director shall not sell inedible salmon for human consumption. Salmon and carcasses may be given to state institutions or schools or to economically depressed people, unless the salmon are unfit for human consumption. Salmon not fit for human consumption may be sold by the director for animal food, fish food, or for industrial purposes.

(4) In the sale of surplus salmon from state hatcheries, the division of purchasing shall require that a portion of the surplus salmon be processed and returned to the state by the purchaser. The processed salmon shall be fit for human consumption and in a form suitable for distribution to individuals. The division of purchasing shall establish the required percentage at a level that does not discourage competitive bidding for the surplus salmon. The measure of the percentage is the combined value of all of the surplus salmon sold. The department of social and health services shall distribute the processed salmon to economically depressed individuals and state institutions pursuant to rules adopted by the department of social and health services. [1990 c 36 § 1; 1985 c 28 § 1; 1983 1st ex.s. c 46 § 26; 1979 c 141 § 382; 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. Formerly RCW 75.12.130.]

75.08.460 Recreational fishery enhancement plan—Progress reports. The director shall report to the governor and the appropriate legislative committees

regarding its progress on the recreational fishery enhancement plan giving the following minimum information:

(1) By July 1, 1990, and by July 1st each succeeding year a report shall include:

(a) Progress on all programs within the plan that are referred to as already underway; and

(b) Specific anticipated needs for additional FTE's, additional capital funds or other needed resources, including whether or not current budgetary dollars are sufficient.

(2) By November 1, 1990, and by November 1st each succeeding year a report shall provide the many specificities omitted from the recreational fishery enhancement plan. They include but are not limited to the following:

(a) The name of the person assigned the responsibility and accountability for over-all management of the recreational fishery enhancement plan.

(b) The name of the person responsible and accountable for management of each regional program.

(c) The anticipated yearly costs related to each regional program.

(d) The specific dates relative to attainment of the recreational fishery enhancement plan goals, including a time-line program by region.

(e) Criteria used for measurement of the successful attainment of the recreational fishery enhancement plan. [1990 c 91 § 2.]

Purpose of plan—1990 c 91: "The legislature is aware that the Washington state department of fisheries introduced a broad new program titled "The Recreational Fishery Enhancement Plan" in October of 1989. The declared purpose of the plan is to emphasize recreational opportunities and develop the plan with emphasis on recreational salmon fishing.

The plan boldly adopts, as its chief goal, Governor Gardner's personal objective: Make Washington the recreational fishing capital of the nation. The director states this will be accomplished through a series of regional programs. The legislature commends the director for his recreational fishery enhancement plan and the various concepts it contains to meet the need for recreational emphasis.

The legislature recognizes that any plan such as the recreational fishery enhancement plan requires creative thinking, innovation, commitment, allocation of appropriate resources, and risk taking. Certain failures may occur in aspects of the programs but only through such far-sighted acceptance of risks will success be achieved.

Because of the importance of this effort to the state of Washington, the legislature and the thousands of Washington recreational fishers must be kept informed as to the progress and success of the recreational fishery enhancement plan." [1990 c 91 § 1.]

Chapter 75.10

ENFORCEMENT—PENALTIES

Sections	
75.10.030	Seizure of property without warrant—Deposit of cash bond in lieu.
75.10.110	General penalties for violations—Seizure and forfeiture.
75.10.120	Forfeiture of license for violations.
75.10.140	Revocation of geoduck licenses.
75.10.170	Emerging commercial fishery—Violation of conditions or requirements.
75.10.180	Personal use violations—Penalties.
75.10.190	Commercial use violations—Penalties.
75.10.200	Miscellaneous violations—Penalties.

75.10.210 Habitual offenders—Penalties.

75.10.030 Seizure of property without warrant—Deposit of cash bond in lieu. (1) Fisheries patrol officers and ex officio fisheries patrol officers may seize without warrant food fish or shellfish they have reason to believe have been taken, killed, transported, or possessed in violation of this title or rule of the director and may seize without warrant boats, vehicles, gear, appliances, or other articles they have reason to believe is [are] held with intent to violate or has [have] been used in violation of this title or rule of the director. The articles seized shall be subject to forfeiture to the state, regardless of ownership. Articles seized may be recovered by their owner by depositing into court a cash bond equal to the value of the seized articles but not more than twenty-five thousand dollars. The cash bond is subject to forfeiture to the state in lieu of the seized article.

(2)(a) In the event of a seizure of an article under subsection (1) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. Within fifteen days following the seizure, the seizing authority shall serve notice on the owner of the property seized and on any person having any known right or interest in the property seized. Notice may be served by any method authorized by law or court rule, including service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen-day period following the seizure.

(b) If no person notifies the department in writing of the person's claim of ownership or right to possession of the articles seized under subsection (1) of this section within forty-five days of the seizure, the articles shall be deemed forfeited.

(c) If any person notifies the department in writing within forty-five days of the seizure, the person shall be afforded an opportunity to be heard as to the claim or right. The hearing shall be before the director or the director's designee, or before an administrative law judge appointed under chapter 34.12 RCW, except that a person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the articles seized is more than five thousand dollars. The department hearing and any subsequent appeal shall be as provided for in Title 34 RCW. The burden of producing evidence shall be upon the person claiming to be the lawful owner or person claiming lawful right of possession of the articles seized. The department shall promptly return the seized articles to the claimant upon a determination by the director or the director's designee, an administrative law judge, or a court that the claimant is the present lawful owner or is lawfully entitled to possession of the articles seized, and that the seized articles were improperly seized.

(d)(i) No conveyance, including vessels, vehicles, or aircraft, is subject to forfeiture under this section by reason of any act or omission established by the owner of the conveyance to have been committed or omitted without the owner's knowledge or consent.

(ii) A forfeiture of a conveyance encumbered by a perfected security interest is subject to the interest of the

secured party if the secured party neither had knowledge nor consented to the act or omission.

(e) When seized property is forfeited under this section the department may retain it for official use unless the property is required to be destroyed, or upon application by any law enforcement agency of the state, release such property to the agency for the use of enforcing this title, or sell such property, and deposit the proceeds to the state general fund, as provided for in RCW 75.08.230. [1990 c 144 § 5; 1983 1st ex.s. c 46 § 34; 1955 c 12 § 75.36.010. Prior: 1949 c 112 § 76(1); Rem. Supp. 1949 § 5780-602(1). Formerly RCW 75.36.010.]

75.10.110 General penalties for violations—Seizure and forfeiture. (1) Unless otherwise provided for in this title, a person who violates this title or rules of the director is guilty of a gross misdemeanor, and upon a conviction thereof shall be subject to the penalties under RCW 9.92.020. Food fish or shellfish involved in the violation shall be forfeited to the state. The court may forfeit seized articles involved in the violation.

(2) The director may specify by rule, when not inconsistent with applicable statutes, that violation of a specific rule is an infraction under chapter 7.84 RCW. [1990 c 144 § 6; 1987 c 380 § 16; 1983 1st ex.s. c 46 § 42; 1979 ex.s. c 99 § 1; 1955 c 12 § 75.08.260. Prior: 1949 c 112 § 75; Rem. Supp. 1949 § 5780-601. Formerly RCW 75.08.260.]

Effective date—Severability—1987 c 380: See RCW 7.84.900 and 7.84.901.

75.10.120 Forfeiture of license for violations. (1) Upon conviction of a person for a violation of this title or rule of the director, in addition to the penalty imposed by law, the court may forfeit the person's license or licenses. The license or licenses shall remain forfeited pending appeal.

(2) The director may prohibit, for one year, the issuance of all commercial fishing licenses to a person convicted of two or more gross misdemeanor or class C felony violations of this title or rule of the director in a five-year period or prescribe the conditions under which the license or licenses may be issued. For purposes of this section, the term "conviction" means a final conviction in a state or municipal court. An unvacated forfeiture of bail or collateral of two hundred fifty dollars or more deposited to secure the defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt on a violation of this title or rule of the director is equivalent to a conviction regardless of whether the imposition of sentence is deferred or the penalty is suspended. [1990 c 144 § 7; 1983 1st ex.s. c 46 § 43; 1979 ex.s. c 99 § 2; 1957 c 171 § 5; 1955 c 12 § 75.28-.380. Prior: 1949 c 112 § 77; Rem. Supp. 1949 § 5780-603. Formerly RCW 75.28.380.]

75.10.140 Revocation of geoduck licenses. (1) In addition to the penalties prescribed in RCW 75.10.110 and 75.10.120, the director may revoke geoduck diver licenses held by a person if within a five-year period that

person is convicted or has an unvacated bail forfeiture for two or more violations of this title or rules of the director relating to geoduck licensing or harvesting.

(2) Except as provided in subsection (3) of this section, the director shall not issue a geoduck diver license to a person who has had a license revoked. This prohibition is effective for one year after the revocation.

(3) Appeals of revocations under this section may be taken under the judicial review provisions of chapter 34.05 RCW. If the license revocation is determined to be invalid, the director shall reissue the license to that person. [1990 c 163 § 7; 1984 c 80 § 4; 1983 1st ex.s. c 46 § 45; 1979 ex.s. c 141 § 7. Formerly RCW 75.28.288.]

75.10.170 Emerging commercial fishery—Violation of conditions or requirements. Upon conviction of a person for violation of the conditions or requirements of an experimental fishery permit or provisions of this title or rule of the director while engaged in an emerging commercial fishery, the director may suspend or revoke the experimental fishery permit and all fishing privileges pursuant thereto or present the conditions under which the experimental fishery permit may be reissued. That suspension or revocation shall become effective on the date the director gives the notice prescribed in RCW 34.05.422(1)(c).

For the purposes of this section, the term "conviction" means a final conviction in a state or municipal court. An unvacated forfeiture of bail or collateral of more than two hundred fifty dollars deposited to secure the defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt on a violation of this title is equivalent to a conviction regardless of whether the imposition of sentence is deferred or the penalty is suspended. [1990 c 63 § 5.]

Emerging commercial fishery: RCW 75.30.220.

75.10.180 Personal use violations—Penalties. Persons who fish for food fish or shellfish for personal use and violate this title or the rules of the director shall be subject to the following penalties:

(1) The following violations are infractions and are punishable under chapter 7.84 RCW:

(a) The failure to immediately record a catch of salmon or sturgeon on a catch record card;

(b) The use of barbed hooks in a barbless hook-only fishery; and

(c) Other personal use violations specified by the director under RCW 75.10.110.

(2) The following violations are misdemeanors and are punishable under RCW 9.92.030:

(a) The retention of undersized food fish or shellfish;

(b) The retention of more food fish or shellfish than is legally allowed, but less than three times the legally allowed personal use limit;

(c) The intentional wasting of recreationally caught food fish or shellfish; and

(d) The setting or lifting of shrimp pots in Hood Canal from one hour after sunset until one hour before sunrise.

(3) The following violations are gross misdemeanors and are punishable under RCW 9.92.020:

(a) The snagging of food fish;

(b) Fishing in closed areas or during a closed season;

(c) Commingling a personal food fish catch with a commercial food fish catch;

(d) The retention of at least three times the legally allowed personal use limits of food fish or shellfish;

(e) The sale, barter, or trade of food fish or shellfish with a wholesale value of less than two hundred fifty dollars by a person who has caught the food fish or shellfish with fishing gear authorized under personal use rules or who has received the food fish or shellfish from someone who caught it with fishing gear authorized under personal use rules; and

(f) Other unclassified personal use violations of Title 75 RCW.

(4) The following violation is a class C felony and is punishable under RCW 9A.20.021(1)(c): The sale, barter, or trade of food fish or shellfish with a wholesale value of two hundred fifty dollars or more by a person who has caught the food fish or shellfish with fishing gear authorized under personal use rules or has received the food fish or shellfish from someone who caught it with fishing gear authorized under personal use rules. [1990 c 144 § 1.]

75.10.190 Commercial use violations—Penalties. Persons who fish, buy, or sell food fish and shellfish commercially and violate this title or the rules of the director shall be subject to the following penalties:

(1) The following violations are misdemeanors and are punishable under RCW 9.92.030:

(a) The failure to complete a fish ticket with all the required information for a commercial fish or shellfish landing; and

(b) The failure to report a commercial fish catch as required by department rules.

(2) The following violations are gross misdemeanors and are punishable under RCW 9.92.020:

(a) The retention of illegal food fish or shellfish species;

(b) The wasting of commercially caught food fish or shellfish;

(c) Commingling commercial and personal use food fish or shellfish catches;

(d) The failure to comply with department rules on commercial fishing licenses;

(e) The failure to comply with department requirements on fishing gear specifications;

(f) The failure to obtain a delivery license as required by department rules;

(g) Violations of the fisheries statutes or rules by fish buyers or wholesale dealers other than violations for fish tickets under subsection (1)(a) of this section;

(h) Fishing during a closed season;

(i) Illegal geoduck harvesting off the legal harvesting tract; and

(j) Other unclassified commercial violations of Title 75 RCW.

(3) The following violations are class C felonies and are punishable under RCW 9A.20.021(1)(c):

(a) Intentionally fishing in a closed area using fishing gear not authorized under personal use regulations;

(b) Intentionally netting salmon in the Pacific Ocean;

(c) Harvesting more than one hundred pounds of geoducks outside of the boundaries of a harvest tract designated by a harvest agreement from the department of natural resources if:

(i) The harvester does not have a valid harvesting agreement from the department of natural resources; or

(ii) The harvesting is done more than one-half mile from the nearest boundary of any harvesting tract designated by a department of natural resources harvesting agreement;

(d) Unlawful participation by a non-Indian fisher with intent to profit in a treaty Indian fishery;

(e) Intentionally fishing within the closed waters of a fish hatchery;

(f) The sale, barter, or trade of food fish or shellfish with a wholesale value of two hundred fifty dollars or more by a person who does not have a valid commercial fishing license and has caught the food fish or shellfish using fishing gear not authorized under personal use rules, or has received the food fish or shellfish from someone who has caught it with fishing gear not authorized under personal use rules; and

(g) Being in possession of food fish or shellfish with a wholesale value of two hundred fifty dollars or more while using fishing gear not authorized under personal use regulations without a valid commercial fishing license. [1990 c 144 § 2.]

75.10.200 Miscellaneous violations—Penalties. Persons who violate this title or the rules of the director shall be subject to the following penalties:

(1) The following violations are gross misdemeanors and are punishable under RCW 9.92.020:

(a) Violating RCW 75.20.100; and

(b) Violating department statutes that require fish screens, fish ladders, and other protective devices for fish.

(2) The following violations are a class C felony and are punishable under RCW 9A.20.021(1)(c):

(a) Discharging explosives in waters that contain adult salmon or sturgeon: PROVIDED, That lawful discharge of devices for the purpose of frightening or killing marine mammals or for the lawful removal of snags or for actions approved under RCW 75.20.100 or 75.12.070(2) are exempt from this subsection; and

(b) To knowingly purchase food fish or shellfish with a wholesale value greater than two hundred fifty dollars that were taken by methods or during times not authorized by department of fisheries rules, or were taken by someone who does not have a valid commercial fishing license, a valid fish buyer's license, or a valid wholesale dealer's license, or were taken with fishing gear authorized for personal use. [1990 c 144 § 3.]

75.10.210 Habitual offenders—Penalties. Persons who repeatedly demonstrate indifference and disrespect

for the fisheries laws of the state shall be considered a threat to the fisheries resource. These habitual offenders shall be denied the privilege of harvesting food fish or shellfish.

The director may revoke or may prescribe conditions for issuing the personal use license or the commercial fishing license, or both, of persons who have four or more gross misdemeanors or class C felony convictions for fisheries violations within a twelve-year period. All food fish and shellfish fishing privileges shall be revoked for the same time period as a license is revoked. A revoked license shall not be reissued for a period of at least two years from the date of revocation, and shall be reissued only under the discretion of the director.

For purposes of this section, "conviction" means a final conviction in a state or municipal court. An unvacated forfeiture of bail or collateral of two hundred fifty dollars or more deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt for violating a provision of this title is equivalent to a conviction regardless of whether the imposition of sentence is deferred or the penalty is suspended. [1990 c 144 § 4.]

Chapter 75.12 UNLAWFUL ACTS

Sections

75.12.090 Theft of food fish or shellfish—Molestation of fishing gear.

75.12.090 Theft of food fish or shellfish—Molestation of fishing gear. (1) It is unlawful to take food fish or shellfish from a building, vehicle, vessel, container, or fishing gear thereby depriving the rightful owner of the food fish or shellfish.

(2) It is unlawful to molest gear used to take food fish or shellfish for either commercial purposes or personal use. [1990 c 144 § 8; 1983 1st ex.s. c 46 § 54; 1982 c 14 § 1; 1955 c 12 § 75.12.090. Prior: 1949 c 112 § 33; Rem. Supp. 1949 § 5780-307.]

Chapter 75.20

CONSTRUCTION PROJECTS IN STATE WATERS

Sections

75.20.005 Informational brochure.
75.20.100 Hydraulic projects or other work—Plans and specifications—Approval—Criminal penalty—Emergencies.
75.20.1001 Hydraulic projects to repair 1990 flood damage—Processing applications.
75.20.1002 Expedited responses to project applications to repair 1990 flood damage—Expiration of section.
75.20.103 Hydraulic projects for irrigation, stock watering, or streambank stabilization—Plans and specifications—Approval—Criminal penalty—Emergencies.
75.20.104 Placement of woody debris as condition of permit.
75.20.1041 Dike vegetation management guidelines—Memorandum of agreement.
75.20.160 Marine beach front protective bulkheads or rockwalls.

75.20.005 Informational brochure. The department of fisheries, the department of wildlife, the department of ecology, and the department of natural resources shall jointly develop an informational brochure that describes when permits and any other authorizations are required for flood damage prevention and reduction projects, and recommends ways to best proceed through the various regulatory permitting processes. [1991 c 322 § 21.]

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

75.20.100 Hydraulic projects or other work—Plans and specifications—Approval—Criminal penalty—Emergencies. In the event that any person or government agency desires to construct any form of hydraulic project or perform other work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state, such person or government agency shall, before commencing construction or work thereon and to ensure the proper protection of fish life, secure the written approval of the department of fisheries or the department of wildlife as to the adequacy of the means proposed for the protection of fish life. This approval shall not be unreasonably withheld. Except as provided in RCW 75.20.1001 and 75.20.1002, the department of fisheries or the department of wildlife shall grant or deny approval within forty-five calendar days of the receipt of a complete application and notice of compliance with any applicable requirements of the state environmental policy act, made in the manner prescribed in this section. The applicant may document receipt of application by filing in person or by registered mail. A complete application for approval shall contain general plans for the overall project, complete plans and specifications of the proposed construction or work within the mean higher high water line in salt water or within the ordinary high water line in fresh water, and complete plans and specifications for the proper protection of fish life. The forty-five day requirement shall be suspended if (1) after ten working days of receipt of the application, the applicant remains unavailable or unable to arrange for a timely field evaluation of the proposed project; (2) the site is physically inaccessible for inspection; or (3) the applicant requests delay. Immediately upon determination that the forty-five day period is suspended, the department of fisheries or the department of wildlife shall notify the applicant in writing of the reasons for the delay. Approval is valid for a period of up to five years from date of issuance. The permittee must demonstrate substantial progress on construction of that portion of the project relating to the approval within two years of the date of issuance. If either the department of fisheries or the department of wildlife denies approval, that department shall provide the applicant, in writing, a statement of the specific reasons why and how the proposed project would adversely affect fish life. Protection of fish life shall be the only ground upon which approval may be denied or conditioned. Chapter 34.05 RCW applies to any denial of project approval, conditional approval, or requirements for project modification upon which approval may be

contingent. If any person or government agency commences construction on any hydraulic works or projects subject to this section without first having obtained written approval of the department of fisheries or the department of wildlife as to the adequacy of the means proposed 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, the person or director of the agency is guilty of a gross misdemeanor. If any such person or government agency is 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 and RCW 75.20.103, "bed" shall mean the land below the ordinary high water lines of state waters. This definition shall not include irrigation ditches, canals, storm water run-off devices, or other artificial watercourses except where they exist in a natural watercourse that has been altered by man.

The phrase "to construct any form of hydraulic project or perform other work" shall not include the act of driving across an established ford. Driving across streams or on wetted stream beds at areas other than established fords requires approval. Work within the ordinary high water line of state waters to construct or repair a ford or crossing requires approval.

For each application, the department of fisheries and the department of wildlife shall mutually agree on whether the department of fisheries or the department of wildlife shall administer the provisions of this section, in order to avoid duplication of effort. The department designated to act shall cooperate with the other department in order to protect all species of fish life found at the project site. If the department of fisheries or the department of wildlife receives an application concerning a site not in its jurisdiction, it shall transmit the application to the other department within three days and notify the applicant.

In case of an emergency arising from weather or stream flow conditions or other natural conditions, the department of fisheries or department of wildlife, through their authorized representatives, shall issue immediately upon request oral approval for removing any obstructions, repairing existing structures, restoring stream banks, or to protect property threatened by the stream or a change in the stream flow without the necessity of obtaining a written approval prior to commencing work. Conditions of an oral approval shall be reduced to writing within thirty days and complied with as provided for in this section. Oral approval shall be granted immediately upon request, for a stream crossing during an emergency situation.

This section shall not apply to the construction of any form of hydraulic project or other work which diverts water for agricultural irrigation or stock watering purposes authorized under or recognized as being valid by the state's water codes, or when such hydraulic project or other work is associated with streambank stabilization

to protect farm and agricultural land as defined in RCW 84.34.020. These irrigation or stock watering diversion and streambank stabilization projects shall be governed by RCW 75.20.103. [1991 c 322 § 30; 1988 c 272 § 1; 1988 c 36 § 33; 1986 c 173 § 1; 1983 1st ex.s. c 46 § 75; 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.]

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

Severability—1988 c 279: "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." [1988 c 272 § 6.]

75.20.1001 Hydraulic projects to repair 1990 flood damage—Processing applications. The department of fisheries and the department of wildlife shall process hydraulic project applications submitted under RCW 75.20.100 or 75.20.103 within thirty days of receipt of the application. This requirement is only applicable for the repair and reconstruction of legally constructed dikes, seawalls, and other flood control structures damaged as a result of flooding or windstorms that occurred in November and December 1990. [1991 c 322 § 12.]

Findings—Intent—Purpose—1991 c 322: See notes following RCW 86.12.200.

75.20.1002 Expedited responses to project applications to repair 1990 flood damage—Expiration of section. (1) This section shall apply only to projects:

(a) Needed to repair streambank and other damage done by the November or December 1990 flood events, or remove accumulated debris and gravel that significantly contributed to flooding during the November and December 1990 flood events; and

(b) That require permits or other authorization for removal of valuable materials as defined in RCW 79.90.060 or permits or authorization under RCW 75.20.100 or 75.20.103.

(2) The department of fisheries, the department of wildlife, and the department of natural resources shall expedite and coordinate any required responses to the project application. A complete application for approval shall contain general plans for the overall project, and complete plans and specifications of the proposed construction or work. Upon receipt of a completed application, the agency that first receives that application shall, within fifteen days, schedule and hold a coordination meeting with all appropriate state, local, or county permitting or authorizing agencies. The project applicant shall be invited to this meeting. The appropriate city, county, or town may coordinate their permit approval processes with the state agencies. As soon as possible, but no later than thirty days after the receipt of a complete application, all appropriate state agencies will deny or approve the project. Any conditions placed upon project approvals shall be coordinated among the state agencies so that those conditions do not conflict.

(3) It is the intent of the legislature that the process described in this section remain in effect until the legislature has an opportunity to enact legislation creating a

coordinated, timely permitting process based on the report required in section 16, chapter 322, Laws of 1991. This section shall expire on June 30, 1993. [1991 c 322 § 22.]

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

75.20.103 Hydraulic projects for irrigation, stock watering, or streambank stabilization—Plans and specifications—Approval—Criminal penalty—Emergencies. In the event that any person or government agency desires to construct any form of hydraulic project or other work that diverts water for agricultural irrigation or stock watering purposes, or when such hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, and when such diversion or streambank stabilization will use, divert, obstruct, or change the natural flow or bed of any river or stream or will utilize any waters of the state or materials from the stream beds, the person or government agency shall, before commencing construction or work thereon and to ensure the proper protection of fish life, secure a written approval from the department of fisheries or the department of wildlife as to the adequacy of the means proposed for the protection of fish life. This approval shall not be unreasonably withheld. Except as provided in RCW 75.20.1001 and 75.20.1002, the department of fisheries or the department of wildlife shall grant or deny the approval within forty-five calendar days of the receipt of a complete application and notice of compliance with any applicable requirements of the state environmental policy act, made in the manner prescribed in this section. The applicant may document receipt of application by filing in person or by registered mail. A complete application for an approval shall contain general plans for the overall project, complete plans and specifications of the proposed construction or work within ordinary high water line, and complete plans and specifications for the proper protection of fish life. The forty-five day requirement shall be suspended if (1) after ten working days of receipt of the application, the applicant remains unavailable or unable to arrange for a timely field evaluation of the proposed project; (2) the site is physically inaccessible for inspection; or (3) the applicant requests delay.

Immediately upon determination that the forty-five day period is suspended, the department of fisheries or the department of wildlife shall notify the applicant in writing of the reasons for the delay.

An approval shall remain in effect without need for periodic renewal for projects that divert water for agricultural irrigation or stock watering purposes and that involve seasonal construction or other work. Approval for streambank stabilization projects shall remain in effect without need for periodic renewal if the problem causing the need for the streambank stabilization occurs on an annual or more frequent basis. The permittee must notify the appropriate agency before commencing the construction or other work within the area covered by the approval.

The permittee must demonstrate substantial progress on construction of that portion of the project relating to the approval within two years of the date of issuance. If either the department of fisheries or the department of wildlife denies approval, that department shall provide the applicant, in writing, a statement of the specific reasons why and how the proposed project would adversely affect fish life. Protection of fish life shall be the only ground upon which approval may be denied or conditioned. Issuance, denial, conditioning, or modification shall be appealable to the hydraulic appeals board established in RCW 43.21B.005 within thirty days of the notice of decision. The burden shall be upon the department of fisheries or the department of wildlife to show that the denial or conditioning of an approval is solely aimed at the protection of fish life.

The department granting approval may, after consultation with the permittee, modify an approval due to changed conditions. The modifications shall become effective unless appealed to the hydraulic appeals board within thirty days from the notice of the proposed modification. The burden is on the department issuing the approval to show that changed conditions warrant the modification in order to protect fish life.

A permittee may request modification of an approval due to changed conditions. The request shall be processed within forty-five calendar days of receipt of the written request. A decision by the department that issued the approval may be appealed to the hydraulic appeals board within thirty days of the notice of the decision. The burden is on the permittee to show that changed conditions warrant the requested modification and that such modification will not impair fish life.

If any person or government agency commences construction on any hydraulic works or projects subject to this section without first having obtained written approval of the department of fisheries or the department of wildlife as to the adequacy of the means proposed 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, the person or director of the agency is guilty of a gross misdemeanor. If any such person or government agency is 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 each application, the department of fisheries and the department of wildlife shall mutually agree on whether the department of fisheries or the department of wildlife shall administer the provisions of this section, in order to avoid duplication of effort. The department designated to act shall cooperate with the other department in order to protect all species of fish life found at the project site. If the department of fisheries or the department of wildlife receives an application concerning a site not in its jurisdiction, it shall transmit the application to the other department within three days and notify the applicant.

In case of an emergency arising from weather or stream flow conditions or other natural conditions, the department of fisheries or department of wildlife, through their authorized representatives, shall issue immediately upon request oral approval for removing any obstructions, repairing existing structures, restoring stream banks, or to protect property threatened by the stream or a change in the stream flow without the necessity of obtaining a written approval prior to commencing work. Conditions of an oral approval shall be reduced to writing within thirty days and complied with as provided for in this section.

For purposes of this chapter, "streambank stabilization" shall include but not be limited to log and debris removal, bank protection (including riprap, jetties, and groins), gravel removal and erosion control. [1991 c 322 § 31; 1988 c 272 § 2; 1988 c 36 § 34; 1986 c 173 § 2.]

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

Severability—1988 c 272: See note following RCW 75.20.100.

75.20.104 Placement of woody debris as condition of permit. Whenever the placement of woody debris is required as a condition of a hydraulic permit approval issued pursuant to RCW 75.20.100 or 75.20.103, the department of fisheries and the department of wildlife, upon request, shall invite comment regarding that placement from the local governmental authority, affected tribes, affected federal and state agencies, and the project applicant. [1991 c 322 § 18.]

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

75.20.1041 Dike vegetation management guidelines—Memorandum of agreement. The department of fisheries, the department of wildlife, and the department of ecology will work cooperatively with the United States army corps of engineers to develop a memorandum of agreement outlining dike vegetation management guidelines so that dike owners are eligible for coverage under P.L. 84-99, and state requirements established pursuant to RCW 75.20.100 and 75.20.103 are met. [1991 c 322 § 19.]

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

75.20.160 Marine beach front protective bulkheads or rockwalls. (1) In order to protect the property of marine waterfront shoreline owners it is necessary to facilitate issuance of hydraulic permits for bulkheads or rockwalls under certain conditions.

(2) The department shall issue a hydraulic permit with or without conditions within forty-five days of receipt of a complete and accurate application which authorizes commencement of construction, replacement, or repair of a marine beach front protective bulkhead or rockwall for single-family type residences or property under the following conditions:

(a) The waterward face of a new bulkhead or rockwall shall be located only as far waterward as is necessary to excavate for footings or place base rock for

the structure and under no conditions shall be located more than six feet waterward of the ordinary high water line;

(b) Any bulkhead or rockwall to replace or repair an existing bulkhead or rockwall shall be placed along the same alignment as the bulkhead or rockwall it is replacing; however, the replaced or repaired bulkhead or rockwall may be placed waterward of and directly abutting the existing structure only in cases where removal of the existing bulkhead or rockwall would result in environmental degradation or removal problems related to geological, engineering, or safety considerations;

(c) Construction of a new bulkhead or rockwall, or replacement or repair of an existing bulkhead or rockwall waterward of the existing structure shall not result in the permanent loss of critical food fish or shellfish habitats; and

(d) Timing constraints shall be applied on a case-by-case basis for the protection of critical habitats, including but not limited to migration corridors, rearing and feeding areas, and spawning habitats, for the proper protection of fish life.

(3) Any bulkhead or rockwall construction, replacement, or repair not meeting the conditions in this section shall be processed under this chapter in the same manner as any other application.

(4) Any person aggrieved by the approval, denial, conditioning, or modification of a hydraulic permit approval under this section may formally appeal the decision to the hydraulic appeals board pursuant to this chapter. [1991 c 279 § 1.]

Chapter 75.25

RECREATIONAL LICENSES

Sections

75.25.095	Family fishing days.
75.25.200	Group permits—Exemption from individual license and fee requirement—Conditions.

75.25.095 Family fishing days. Notwithstanding RCW 75.25.090, the director may adopt rules designating times and places for the purposes of family fishing days when a recreational fishing license is not required to fish for food fish or shellfish. All other applicable laws and rules shall remain in effect. [1990 c 34 § 2.]

Legislative finding—1990 c 34: "The legislature finds that conservation and wise use of the state's food fish and shellfish resources are of paramount importance. The legislature finds that public awareness and enjoyment is critical to conserving the state's food fish and shellfish resources. The legislature finds that public awareness can be increased if the departments of wildlife and fisheries jointly participate in a national fishing week program by scheduling free family fishing days on the same days." [1990 c 34 § 1.]

75.25.200 Group permits—Exemption from individual license and fee requirement—Conditions. Physically or mentally handicapped persons, mentally ill persons, hospital patients, and senior citizens who are in the care of a state-licensed or state-operated care facility may fish for food fish and shellfish during open season without individual licenses or the payment of

individual license fees if such fishing activity is occasional, is conducted in a group supervised by staff of the care facility, and the facility holds a group fishing permit issued by the director. The director shall issue such a permit upon application by care facility staff. [1990 c 35 § 2.]

Legislative intent—1990 c 35: "It is the intent of the legislature to make recreational fishing opportunities more available to physically or mentally handicapped persons, mentally ill persons, hospital patients, and senior citizens who are in the care of a state-licensed or state-operated care facility by allowing the department of fisheries to issue group fishing permits." [1990 c 35 § 1.]

Fishing licenses: RCW 77.32.235.

Chapter 75.28

COMMERCIAL LICENSES

Sections

75.28.010	Commercial licenses and permits required—Exemption.
75.28.287	Geoduck diver license.
75.28.710	Professional salmon guide license.

75.28.010 Commercial licenses and permits required—Exemption. (1) Except as otherwise provided by this title, a license or permit issued by the director is required to:

(a) Commercially fish for or take food fish or shellfish;

(b) Deliver food fish or shellfish taken in offshore waters;

(c) Operate a charter boat;

(d) Engage in processing or wholesaling food fish or shellfish; or

(e) Operate as a guide for salmon for personal use in freshwater rivers and streams, other than that part of the Columbia river below the bridge at Longview.

(2) It is unlawful to engage in the activities described in subsection (1) of this section without having in possession the licenses or permits required by this title.

(3) No license or permit is required for the production or harvesting of private sector cultured aquatic products as defined in RCW 15.85.020 or for the delivery, processing, or wholesaling of such aquatic products. However, if a means of identifying such products is required by rules adopted under RCW 15.85.060, the exemption from licensing or permit requirements established by this subsection applies only if the aquatic products are identified in conformance with those rules. [1991 c 362 § 1; 1985 c 457 § 18; 1983 1st ex.s. c 46 § 101; 1959 c 309 § 2; 1955 c 12 § 75.28.010. Prior: 1949 c 112 § 73; Rem. Supp. 1949 § 5780–511.]

75.28.287 Geoduck diver license. Every diver engaged in the commercial harvest of geoduck or other clams shall obtain a nontransferable geoduck diver license. [1990 c 163 § 6; 1989 c 316 § 13; 1983 1st ex.s. c 46 § 130; 1979 ex.s. c 141 § 4; 1969 ex.s. c 253 § 4.]

Construction—Severability—1969 ex.s. c 253: See notes following RCW 75.24.100.

Designation of aquatic lands for geoduck harvesting: RCW 79.96.085.

Geoducks, harvesting for commercial purposes—License: RCW 75.24.100.

75.28.710 Professional salmon guide license. A professional salmon guide license is required for the holder to offer or perform the services of a professional salmon guide in the taking of salmon for personal use in freshwater rivers and streams, other than in that part of the Columbia river below the bridge at Longview. The annual license fees are fifty dollars for residents and five hundred dollars for nonresidents. A surcharge of twenty dollars shall be assessed on each resident guide license and a surcharge of one hundred dollars shall be assessed on each nonresident guide license for the purposes of RCW 75.50.100. [1991 c 362 § 2.]

Chapter 75.30

LICENSE LIMITATION PROGRAMS

Sections

75.30.050	Advisory review boards.
75.30.210	Sea urchin fishery endorsement—Required—Limitation on issuance—Transferable to family members—Issuance of new endorsements.
75.30.220	Emerging commercial fishery designation—Experimental fishery permits.
75.30.230	Emerging commercial fishery designation—Legislative review.
75.30.240	Emerging commercial fishery—License status—Recommendations to legislature.
75.30.250	Sea cucumber endorsement—Requirements.

75.30.050 Advisory review boards. (1) The director shall appoint three-member advisory review boards to hear cases as provided in RCW 75.30.060. Members shall be from:

(a) The salmon charter boat fishing industry in cases involving salmon charter boat licenses or angler permits;

(b) The commercial salmon fishing industry in cases involving commercial salmon licenses;

(c) The commercial crab fishing industry in cases involving Puget Sound crab license endorsements;

(d) The commercial herring fishery in cases involving herring validations;

(e) The commercial Puget Sound whiting fishery in cases involving Puget Sound whiting license endorsements;

(f) The commercial sea urchin fishery in cases involving sea urchin endorsements to shellfish diver licenses; and

(g) The commercial sea cucumber fishery in cases involving sea cucumber endorsements to shellfish diver licenses.

(2) Members shall serve at the discretion of the director and shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. [1990 c 61 § 3; 1989 c 37 § 3; 1986 c 198 § 7; 1983 1st ex.s. c 46 § 138; 1977 ex.s. c 106 § 5.]

Legislative finding—1990 c 61: See note following RCW 75.30.220.

Legislative finding—1989 c 37: See note following RCW 75.30.210.

Legislative findings—Severability—1977 ex.s. c 106: See notes following RCW 75.30.065.

75.30.210 Sea urchin fishery endorsement—Required—Limitation on issuance—Transferable to family members—Issuance of new endorsements. (1) After October 1, 1990, it is unlawful to commercially take any species of sea urchin using shellfish diver gear without first obtaining a sea urchin endorsement to accompany a shellfish diver license. A sea urchin endorsement to a shellfish diver license issued under RCW 75.28.130(5) shall be limited to those vessels which:

(a) Held a commercial shellfish diver license, excluding clams, during calendar years 1988 and 1989 or had transferred to the vessel such a license;

(b) Have not transferred the license to another vessel; and

(c) Can establish, by means of dated shellfish receiving documents issued by the department, that twenty thousand pounds of sea urchins were caught and landed under the license during the period of April 1, 1986, through March 31, 1988.

Endorsements issued under this section are a new licensing condition, and the continuing license provisions of RCW 34.05.422(3) are not applicable.

(2) In addition to the requirements of subsection (1) of this section, after December 31, 1991, sea urchin endorsements to shellfish diver licenses issued under RCW 75.28.130(5) may be issued only to vessels:

(a) Which held a sea urchin endorsement to a shellfish diver license during the previous year or had transferred to the vessel such a license; and

(b) From which twenty thousand pounds of sea urchins were caught and landed in this state during the two-year period ending March 31 of an odd-numbered year, as documented by valid shellfish receiving documents issued by the department.

Where failure to obtain the license during the previous year was the result of a license suspension or revocation by the department, the vessel may qualify for a license by establishing that the vessel held such a license during the last year in which it was eligible.

(3) The director may reduce or waive any landing requirement established under this section upon the recommendation of a board of review established under RCW 75.30.050. The board of review may recommend a reduction or waiver of the landing requirement in individual cases if in the board's judgment, extenuating circumstances prevent achievement of the landing requirement. The director shall adopt rules governing the operation of the board of review and defining "extenuating circumstances."

(4) Sea urchin endorsements issued under this section are not transferable from one owner to another owner, except from parent to child, or from spouse to spouse during marriage or as a result of marriage dissolution, or upon the death of the owner. This restriction applies to all changes in the vessel owner's name on the license, including (a) changes during the license year, and (b) changes during the license renewal process between years. This restriction does not prevent changes in vessel

operator or transfers between vessels when the vessel owner remains unchanged. Upon request of a vessel owner, the director may issue a temporary permit to allow the vessel owner to use the license endorsement on a leased or rented vessel.

(5) If less than forty-five vessels are eligible for sea urchin endorsements, the director may accept applications for new endorsements. The director shall determine by random selection the successful applicants for the additional endorsements. The number of additional endorsements issued shall be sufficient to maintain up to forty-five vessels in the sea urchin fishery. The director shall adopt rules governing the application, selection, and issuance procedure for new sea urchin endorsements, based upon recommendations of a board of review established under RCW 75.30.050. [1990 c 62 § 2; 1989 c 37 § 2.]

Legislative finding—1990 c 62; 1989 c 37: "The legislature finds that a significant commercial sea urchin fishery is developing within state waters. The potential for depletion of the sea urchin stocks in these waters is increasing, particularly as the sea urchin fishery becomes an attractive alternative to fishermen facing increasing restrictions on other types of commercial fishery activities.

The legislature finds that the number of vessels engaged in commercial sea urchin fishing has steadily increased. This factor, combined with advances in marketing techniques, has resulted in strong pressures on the supply of sea urchins. The legislature desires to maintain the livelihood of those vessel owners who have historically and continuously participated in the sea urchin fishery. The legislature desires that the director have the authority to consider extenuating circumstances concerning failure to meet landing requirements for both initial endorsement issuance and endorsement renewal.

The legislature finds that increased regulation of commercial sea urchin fishing is necessary to preserve and efficiently manage the commercial sea urchin fishery in the waters of the state. The legislature is aware that the continuing license provisions of the administrative procedure act, RCW 34.05.422(3) provide procedural safeguards, but finds that the pressure on the sea urchin resource endangers both the resource and the economic well-being of the sea urchin fishery, and desires, therefore, to exempt sea urchin endorsements from the continuing license provision." [1990 c 62 § 1; 1989 c 37 § 1.]

75.30.220 Emerging commercial fishery designation—Experimental fishery permits. (1) The director may by rule designate a fishery as an emerging commercial fishery.

(2) The director may issue experimental fishery permits for commercial harvest in an emerging commercial fishery. The director shall determine by rule the number and qualifications of participants for such experimental fishery permits. The director shall limit the number of these permits to prevent habitat damage, ensure conservation of the resource, and prevent overharvesting. In developing rules for limiting participation in an emerging or expanding commercial fishery, the director shall appoint a five-person advisory board representative of the affected fishery industry. The advisory board shall review and make recommendations to the director on rules relating to the number and qualifications of the participants for such supplemental fishery permits.

(3) RCW 34.05.422(3) does not apply to applications for new experimental fishery permits.

(4) Upon request of a vessel owner, the director may allow the vessel owner to temporarily transfer the experimental fishery permit to a leased or rented vessel. The

director shall allow such temporary transfers only when the vessel holding the experimental fishery permit is disabled. [1990 c 63 § 2.]

Legislative finding—1990 c 63: "The legislature finds that:

(1) A number of commercial fisheries have emerged or expanded in the past decade;

(2) Scientific information is critical to the proper management of an emerging or expanding commercial fishery; and

(3) The scientific information necessary to manage an emerging or expanding commercial fishery can best be obtained through the use of limited experimental fishery permits allowing harvest levels that will preserve and protect the state's food fish and shellfish resource." [1990 c 63 § 1.]

75.30.230 Emerging commercial fishery designation—Legislative review. Whenever the director promulgates a rule designating an emerging commercial fishery, the legislative standing committees of the house of representatives and senate dealing with fisheries issues shall be notified of the rule and its justification thirty days prior to the effective date of the rule. [1990 c 63 § 3.]

75.30.240 Emerging commercial fishery—License status—Recommendations to legislature. Within five years after adopting rules to govern the number and qualifications of participants in an emerging commercial fishery, the director shall provide to the appropriate senate and house of representatives committees a report which outlines the status of the fishery and a recommendation as to whether a separate commercial license, license fee, or endorsement and/or a limited harvest program should be established for that fishery. [1990 c 63 § 4.]

75.30.250 Sea cucumber endorsement—Requirements. (1) After April 30, 1990, it is unlawful to commercially take while using shellfish diver gear any species of sea cucumber without first obtaining a sea cucumber endorsement to accompany a shellfish diver license. A sea cucumber endorsement to a shellfish diver license issued under RCW 75.28.130(5) shall be limited to those vessels which:

(a) Held a commercial shellfish diver license (excluding clams), between January 1, 1989, and December 31, 1989, or had transferred to the vessel such a license, and held a permit for harvest of sea cucumbers in 1989;

(b) Have not transferred the license to another vessel;

(c) Can establish, by means of dated shellfish receiving documents issued by the department, that thirty landings of sea cucumbers were made under the license during the period of January 1, 1988, through December 31, 1989; and

(d) Endorsements issued under this section are a new licensing condition, and the continuing license provisions of RCW 34.05.422(3) are not applicable.

(2) In addition to the requirements of subsection (1) of this section, after December 31, 1991, sea cucumber endorsements to shellfish diver licenses issued under RCW 75.28.130(5) may be issued only to vessels which:

(a) Held a sea cucumber endorsement to a shellfish diver license during the previous two years or had transferred to the vessel such a license; and

(b) Can establish, by means of dated shellfish receiving documents issued by the department, that thirty landings of sea cucumbers totalling at least ten thousand pounds were made under the license during the previous two-year period ending December 31 of the odd-numbered year.

Where failure to obtain the license during either of the previous two years was the result of a license suspension by the department or the court, the vessel may qualify for a license by establishing that the vessel held such a license and a sea cucumber endorsement during the last year in which it was eligible.

(3) The director may reduce or waive any landing or poundage requirement established under this section upon the recommendation of a board of review established under RCW 75.30.050. The board of review may recommend a reduction or waiver of any landing or poundage requirement in individual cases if in the board's judgment, extenuating circumstances prevent achievement of the landing or poundage requirement. The director shall adopt rules governing the operation of the board of review and defining "extenuating circumstances."

(4) Sea cucumber endorsements issued under this section are not transferrable from one owner to another owner except from parent to child, from spouse to spouse during marriage or as a result of marriage dissolution, or upon death of the owner. This restriction does not prevent changes in vessel operator or transfers between vessels when the vessel owner remains unchanged.

(5) If less than fifty vessels are eligible for sea cucumber endorsements, the director may accept applications for new endorsements from those persons who can demonstrate two years' experience in the Washington state sea cucumber diver fishery. The director shall determine by random selection the successful applicants for the additional endorsements. The number of additional endorsements issued shall be sufficient to maintain up to fifty vessels in the sea cucumber fishery. The director shall adopt rules governing the application, selection, and issuance procedure for new sea cucumber endorsements, based upon recommendations of a board of review established under RCW 75.30.050. [1990 c 61 § 2.]

Legislative findings—1990 c 61: "The legislature finds that a significant commercial sea cucumber fishery is developing within state waters. The potential for depletion of the sea cucumber stocks in these waters is increasing, particularly as the sea cucumber fishery becomes an attractive alternative to commercial fishers who face increasing restrictions on other types of commercial fishery activities.

The legislature finds that the number of commercial fishers engaged in commercially harvesting sea cucumbers has rapidly increased. This factor, combined with increases in market demand, has resulted in strong pressures on the supply of sea cucumbers.

The legislature finds that increased regulation of commercial sea cucumber fishing is necessary to preserve and efficiently manage the commercial sea cucumber fishery in the waters of the state.

The legislature finds that it is desirable in the long term to reduce the number of vessels participating in the commercial sea cucumber fishery to fifty vessels to preserve the sea cucumber resource, efficiently manage the commercial sea cucumber fishery in the waters of the state, and reduce conflict with upland owners.

The legislature finds that it is important to preserve the livelihood of those who have historically participated in the commercial sea cucumber fishery that began about 1970 and that the 1988 and 1989 seasons should be used to document historical participation." [1990 c 61 § 1.]

Chapter 75.48

SALMON ENHANCEMENT FACILITIES—BOND ISSUE

Sections	
75.48.020	General obligation bonds authorized—Purpose— Terms—Appropriation required.
75.48.030	Repealed.

75.48.020 General obligation bonds authorized—Purpose—Terms—Appropriation required. For the purpose of providing funds for the planning, acquisition, construction, and improvement of salmon hatcheries, other salmon propagation facilities including natural production sites, and necessary supporting facilities within the state, the state finance committee may issue general obligation bonds of the state of Washington in the sum of twenty-nine million two hundred thousand dollars or so much thereof as may be required to finance the improvements defined in this chapter and all costs incidental thereto. These bonds shall be paid and discharged within thirty years. No bonds authorized by this chapter may be offered for sale without prior legislative appropriation of the proceeds of such bonds to be sold. [1990 1st ex.s. c 15 § 10. Prior: 1989 1st ex.s. c 14 § 15; 1989 c 136 § 8; 1985 ex.s. c 4 § 10; 1983 1st ex.s. c 46 § 162; 1981 c 261 § 1; 1980 c 15 § 1; 1977 ex.s. c 308 § 2.]

Severability—1990 1st ex.s. c 15: See note following RCW 43.99H.010.

Severability—Effective dates—1989 1st ex.s. c 14: See RCW 43.99H.900 and 43.99H.901.

Intent—1989 c 136: See note following RCW 43.83A.020.

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

Legislative finding—1977 ex.s. c 308: "The long range economic development goals for the state of Washington must include the restoration of salmon runs to provide an increased supply of this renewable resource for the benefit of commercial and recreational users and the economic well-being of the state." [1977 ex.s. c 308 § 1. Formerly RCW 75.48.010.]

75.48.030 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 75.50

SALMON ENHANCEMENT PROGRAM

Sections	
75.50.090	Regional fisheries enhancement groups—Incorporation prerequisites.
75.50.100	Regional fisheries enhancement group account— Revenue sources, uses, and limitations.
75.50.110	Regional fisheries enhancement group advisory board.
75.50.120	Enhancement efforts—Biennial report.

75.50.090 Regional fisheries enhancement groups—Incorporation prerequisites. Each regional

fisheries enhancement group shall be incorporated pursuant to Title 24 RCW. Any interested person or group shall be permitted to join. It is desirable for the group to have representation from all categories of fishers and other parties that have interest in salmon within the region, as well as the general public. [1990 c 58 § 2.]

Findings—1990 c 58: "The legislature finds that: (1) It is in the best interest of the state to encourage nonprofit regional fisheries enhancement groups authorized in RCW 75.50.070 to participate in enhancing the state's salmon population including, but not limited to, salmon research, increased natural and artificial production, and through habitat improvement; (2) such regional fisheries enhancement groups interested in improving salmon habitat and rearing salmon shall be eligible for financial assistance; (3) such regional fisheries enhancement groups should seek to maximize the efforts of volunteer personnel and private donations; (4) this program will assist the state in its goal to double the salmon catch by the year 2000; (5) this program will benefit both commercial and recreational fisheries and improve cooperative efforts to increase salmon production through a coordinated approach with similar programs in other states and Canada; and (6) the Grays Harbor fisheries enhancement task force's exemplary performance in salmon enhancement provides a model for establishing regional fisheries enhancement groups by rule adopted under RCW 75.50.070, 75.50.080, and 75.50.090 through 75.50.110." [1990 c 58 § 1.]

75.50.100 Regional fisheries enhancement group account—Revenue sources, uses, and limitations. The dedicated regional fisheries enhancement group account is created in the custody of the state treasurer. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

A surcharge of one dollar shall be collected on each recreational salmon license sold in the state. A surcharge of one hundred dollars shall be collected on each commercial salmon fishing license and each charter boat "salmon and other food fish" license sold in the state. The department shall study methods for collecting and making available, an annual list, including names and addresses, of all persons who obtain recreational and commercial salmon fishing licenses. This list may be used to assist formation of the regional fisheries enhancement groups and allow the broadest participation of license holders in enhancement efforts. The results of the study shall be reported to the house of representatives fisheries and wildlife committee and the senate environment and natural resources committee by October 1, 1990. All receipts shall be placed in the regional fisheries enhancement group account and shall be used exclusively for regional fisheries enhancement group projects for the purposes of RCW 75.50.110. Funds from the regional fisheries enhancement group account shall not serve as replacement funding for department operated salmon projects that exist on January 1, 1991.

All revenue from the department's sale of salmon carcasses and eggs that return to group facilities shall be deposited in the regional fisheries enhancement group account for use by the regional fisheries enhancement group that produced the surplus. The department shall adopt rules to implement this section pursuant to chapter 34.05 RCW. [1990 c 58 § 3.]

Effective date—1990 c 58 § 3: "Section 3 of this act shall take effect January 1, 1991." [1990 c 58 § 6.]

Findings—1990 c 58: See note following RCW 75.50.090.

75.50.110 Regional fisheries enhancement group advisory board. A regional fisheries enhancement group advisory board is established to make recommendations to the director. The advisory board shall make recommendations regarding regional enhancement group rearing project proposals and funding of those proposals. The members shall be appointed by the director and consist of two commercial fishing representatives, two recreational fishing representatives, and three at-large positions. The advisory board membership shall include two members serving ex officio to be nominated, one through the Northwest Indian fisheries commission, and one through the Columbia river intertribal fish commission.

The department may use account funds to provide agency assistance to the groups. The level of account funds used by the department shall be determined by the director after review and recommendation by the regional fisheries enhancement group advisory board and shall not exceed twenty percent of annual contributions to the account. [1990 c 58 § 4.]

Findings—1990 c 58: See note following RCW 75.50.090.

75.50.120 Enhancement efforts—Biennial report. The department and the regional fisheries enhancement group advisory board shall report biennially to the senate environment and natural resources committee, the house of representatives fisheries and wildlife committee, the senate ways and means committee and house of representatives fiscal committees, or any successor committees beginning October 1, 1991. The report shall include but not be limited to the following:

- (1) An evaluation of enhancement efforts;
 - (2) A description of projects;
 - (3) A region by region accounting of financial contributions and expenditures including the enhancement group account funds; and
 - (4) Volunteer participation and member affiliation.
- [1990 c 58 § 5.]

Findings—1990 c 58: See note following RCW 75.50.090.

Title 76

FORESTS AND FOREST PRODUCTS

Chapters

- 76.04** Forest protection.
- 76.09** Forest practices.
- 76.12** Reforestation.
- 76.13** Stewardship of nonindustrial forests and woodlands.
- 76.15** Community and urban forestry.

Chapter 76.04
FOREST PROTECTION

Sections

76.04.630 Landowner contingency forest fire suppression account—Expenditures—Assessments.

76.04.630 Landowner contingency forest fire suppression account—Expenditures—Assessments. There is created a landowner contingency forest fire suppression account in the state treasury. Moneys in the account may be spent only as provided in this section. Disbursements from the account shall be on authorization of the commissioner of public lands or the commissioner's designee. The account is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements.

The department may expend from this account such amounts as may be available and as it considers appropriate for the payment of emergency fire costs resulting from a participating landowner fire. The department may, when moneys are available from the landowner contingency forest fire suppression account, expend moneys for summarily abating, isolating, or reducing an extreme fire hazard under RCW 76.04.660. All moneys recovered as a result of the department's actions, from the owner or person responsible, under RCW 76.04.660 shall be deposited in the landowner contingency forest fire suppression account.

When a determination is made that the fire was started by other than a landowner operation, moneys expended from this account in the suppression of such fire shall be recovered from such general fund appropriations as may be available for emergency fire suppression costs. The department shall deposit in the landowner contingency forest fire suppression account any moneys paid out of the account which are later recovered, less reasonable costs of recovery.

This account shall be established and renewed by a special forest fire suppression account assessment paid by participating landowners at a rate to be established by the department, but not to exceed fifteen cents per acre per year for such period of years as may be necessary to establish and thereafter reestablish a balance in the account of three million dollars. The department may establish a minimum assessment for ownership parcels identified in RCW 76.04.610 as paying the minimum assessment. The maximum assessment for these parcels shall not exceed the fees levied on a thirty-acre parcel. There shall be no assessment on each parcel of privately owned lands of less than two acres. The assessments may differ to equitably distribute the assessment based on emergency fire suppression cost experience necessitated by 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 protection assessments. Payment of emergency costs from this account shall in no way restrict the right of the department to recover costs pursuant to RCW 76.04.495 or other laws.

When the department determines that a forest fire was started in the course of or as a result of a landowner operation, it shall notify the forest fire advisory board of the determination. The determination shall be final, unless, within ninety days of the notification, the forest fire advisory board or any interested party serves a request for a hearing before the department. The hearing shall constitute an adjudicative proceeding under chapter 34.05 RCW, the administrative procedure act, and any appeal shall be in accordance with RCW 34.05.510 through 34.05.598. [1991 1st sp.s. c 13 § 31. Prior: 1989 c 362 § 2; 1989 c 175 § 162; 1986 c 100 § 37.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Effective date—1989 c 175: See note following RCW 34.05.010.

Chapter 76.09
FOREST PRACTICES

Sections

76.09.050 Rules establishing classes of forest practices—Applications for classes of forest practices—Approval or disapproval—Notifications—Procedures—Appeals—Waiver.

76.09.060 Applications for forest practices—Form—Contents—Conversion of forest land to other use—New applications—Approval—Emergencies.

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 thirty 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, wildlife, and fisheries, and to the county, city, or town in whose jurisdiction 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, city, or town 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, city, or town objects if:

(a) The department receives written notice from the county, city, or town of such objections within fourteen business days from the time of transmittal of the application to the county, city, or town, 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, city, or town 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, city, or town consents to its approval or such disapproval is reversed on appeal. The applicant shall be a party to all department appeals of county, city, or town objections. Unless the county, city, or town 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, city, or town objections has expired.

(8) In addition to any rights under the above paragraph, the county, city, or town 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(8). In such appeals there shall be no presumption of correctness of either the county, city, or town or the department position.

(10) The department shall, within four business days notify the county, city, or town of all notifications, approvals, and disapprovals of an application affecting lands within the county, city, or town, except to the extent the county, city, or town has waived its right to such notice.

(11) A county, city, or town 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. [1990 1st ex.s. c 17 § 61; 1988 c 36 § 47; 1987 c 95 § 9; 1975 1st ex.s. c 200 § 2; 1974 ex.s. c 137 § 5.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

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, town, and regional governmental authority 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, city, town, 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, city, or town shall constitute a violation of each of the county, municipal city, town, 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 or her intent with respect to conversion and acknowledging that he or she 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. [1990 1st ex.s. c 17 § 62; 1975 1st ex.s. c 200 § 3; 1974 ex.s. c 137 § 6.]

*Reviser's note: Chapter 84.28 RCW was decodified pursuant to 1991 c 245 § 41.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Chapter 76.12 REFORESTATION

Sections

76.12.030	Deed of county land to department—Disposition of proceeds.
76.12.067	Reconveyance to county of certain leased lands.
76.12.205	Olympic natural resources center—Finding, intent.
76.12.210	Olympic natural resources center—Purpose, programs.
76.12.220	Olympic natural resources center—Administration.
76.12.230	Olympic natural resources center—Funding—Contracts.

76.12.030 Deed of county land to department—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 department deems such land necessary for the purposes of this chapter, the county shall, upon demand by the

department, deed such land to the department and the land shall become a part of the state forest lands.

Such land shall be held in trust and administered and protected by the department 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 with a population of less than nine thousand shall first be applied to the reduction of any indebtedness existing in the current expense fund of such county during the year of payment. [1991 c 363 § 151; 1988 c 128 § 24; 1981 2nd ex.s. c 4 § 4; 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.]

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

Severability—1981 2nd ex.s. c 4: See note following RCW 43.85.130.

76.12.067 Reconveyance to county of certain leased lands. If the board of natural resources determines that any forest lands deeded to the board or the state pursuant to this chapter, which are leased to any county for uses which have as one permitted use a sanitary landfill and/or transfer station, are no longer appropriate for management by the board, the board may reconvey all of the lands included within any such lease to that county. Reconveyance shall be by quitclaim deed executed by the chairman of the board. Upon execution of such deed, full legal and equitable title to such lands shall be vested in that county, and any leases on such lands shall terminate. A county that receives any such reconveyed lands shall indemnify and hold the state of Washington harmless from any liability or expense arising out of the reconveyed lands. [1991 c 10 § 1.]

76.12.205 Olympic natural resources center—Finding, intent. The legislature finds that conflicts over the use of natural resources essential to the state's residents, especially forest and ocean resources, have increased dramatically. There are growing demands that these resources be fully utilized for their commodity values, while simultaneously there are increased demands for protection and preservation of these same resources. While these competing demands are most often viewed as mutually exclusive, recent research has suggested that commodity production and ecological values can be integrated. It is the intent of the legislature to

foster and support the research and education necessary to provide sound scientific information on which to base sustainable forest and marine industries, and at the same time sustain the ecological values demanded by much of the public. [1991 c 316 § 1.]

Severability—1991 c 316: "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." [1991 c 316 § 6.]

76.12.210 Olympic natural resources center—Purpose, programs. The Olympic natural resources center is hereby created at the University of Washington in the college of forest resources and the college of ocean and fishery sciences. The center shall maintain facilities and programs in the western portion of the Olympic Peninsula. Its purpose shall be to demonstrate innovative management methods which successfully integrate environmental and economic interests into pragmatic management of forest and ocean resources. The center shall combine research and educational opportunities with experimental forestry, oceans management, and traditional management knowledge into an overall program which demonstrates that management based on sound economic principles is made superior when combined with new methods of management based on ecological principles. The programs developed by the center shall include the following:

(1) Research and education on a broad range of ocean resources problems and opportunities in the region, such as estuarine processes, ocean and coastal management, offshore development, fisheries and shellfish enhancement, and coastal business development, tourism, and recreation. In developing this component of the center's program, the center shall collaborate with coastal educational institutions such as Grays Harbor community college and Peninsula community college;

(2) Research and education on forest resources management issues on the landscape, ecosystem, or regional level, including issues that cross legal and administrative boundaries;

(3) Research and education that broadly integrates marine and terrestrial issues, including interactions of marine, aquatic, and terrestrial ecosystems, and that identifies options and opportunities to integrate the production of commodities with the preservation of ecological values. Where appropriate, programs shall address issues and opportunities that cross legal and administrative boundaries;

(4) Research and education on natural resources and their social and economic implications, and on alternative economic and social bases for sustainable, healthy, resource-based communities;

(5) Educational opportunities such as workshops, short courses, and continuing education for resource professionals, policy forums, information exchanges including international exchanges where appropriate, conferences, student research, and public education; and

(6) Creation of a neutral forum where parties with diverse interests are encouraged to address and resolve their conflicts. [1991 c 316 § 2; 1989 c 424 § 4.]

Severability—1991 c 316: See note following RCW 76.12.205.

Findings—Effective date—1989 c 424: See notes following RCW 76.12.190.

76.12.220 Olympic natural resources center—Administration. The Olympic natural resources center shall operate under the authority of the board of regents of the University of Washington. It shall be administered by a director appointed jointly by the deans of the college of forest resources and the college of ocean and fishery sciences. The director shall be a member of the faculty of one of those colleges. The director shall appoint and maintain a scientific or technical committee, and other committees as necessary, to advise the director on the efficiency, effectiveness, and quality of the center's activities.

A policy advisory board consisting of eleven members shall be appointed by the governor to advise the deans and the director on policies for the center that are consistent with the purposes of the center. Membership on the policy advisory board shall broadly represent the various interests concerned with the purposes of the center, including state and federal government, environmental organizations, local community, timber industry, and Indian tribes.

Service on boards and committees of the center shall be without compensation but actual travel expenses incurred in connection with service to the center may be reimbursed from appropriated funds in accordance with RCW 43.03.050 and 43.03.060. [1991 c 316 § 3.]

Severability—1991 c 316: See note following RCW 76.12.205.

76.12.230 Olympic natural resources center—Funding—Contracts. The center may solicit gifts, grants, conveyances, bequests, and devises, whether real or personal property, or both, in trust or otherwise, to be directed to the center for carrying out the purposes of the center. The center may solicit contracts for work, financial and in-kind contributions, and support from private industries, interest groups, federal and state sources, and other sources. It may also use separately appropriated funds of the University of Washington for the center's activities. [1991 c 316 § 4.]

Severability—1991 c 316: See note following RCW 76.12.205.

Chapter 76.13

STEWARDSHIP OF NONINDUSTRIAL FORESTS AND WOODLANDS

Sections	
76.13.005	Finding.
76.13.007	Purpose.
76.13.010	Definitions.
76.13.020	Authority.
76.13.030	Funding sources—Fees—Contracts.

76.13.005 Finding. The legislature hereby finds and declares that:

(1) Over half of the private forest and woodland acreage in Washington is owned by landowners with less

than five thousand acres who are not in the business of industrial handling or processing of timber products.

(2) Nonindustrial forests and woodlands are absorbing more demands and impacts on timber, fish, wildlife, water, recreation, and aesthetic resources, due to population growth and a shrinking commercial forest land base.

(3) Nonindustrial forests and woodlands provide valuable habitat for many of the state's numerous fish, wildlife, and plant species, including some threatened and endangered species, and many habitats can be protected and improved through knowledgeable forest resource stewardship.

(4) Providing for long-term stewardship of nonindustrial forests and woodlands in growth areas and rural areas is an important factor in maintaining Washington's special character and quality of life.

(5) In order to encourage and maintain nonindustrial forests and woodlands for their present and future benefit to all citizens, Washington's nonindustrial forest and woodland owners' long-term commitments to stewardship of forest resources must be recognized and supported by the citizens of Washington state. [1991 c 27 § 1.]

76.13.007 Purpose. The purpose of this chapter is to:

(1) Promote the coordination and delivery of services with federal, state, and local agencies, colleges and universities, landowner assistance organizations, consultants, forest resource-related industries and environmental organizations to nonindustrial forest and woodland owners.

(2) Facilitate the production of forest products, enhancement of wildlife and fisheries, protection of streams and wetlands, culturing of special plants, availability of recreation opportunities and the maintenance of scenic beauty for the enjoyment and benefit of nonindustrial forest and woodland owners and the citizens of Washington by meeting the landowners' stewardship objectives. [1991 c 27 § 2.]

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

(1) "Department" means the department of natural resources.

(2) "Landowner" means an individual, partnership, private, public or municipal corporation, Indian tribe, state agency, county, or local government entity, educational institution, or association of individuals of whatever nature that own nonindustrial forests and woodlands.

(3) "Nonindustrial forests and woodlands" are those suburban acreages and rural lands supporting or capable of supporting trees and other flora and fauna associated with a forest ecosystem, comprised of total individual land ownerships of less than five thousand acres and not directly associated with wood processing or handling facilities.

(4) "Stewardship" means managing by caring for, promoting, protecting, renewing, or reestablishing or both, forests and associated resources for the benefit of

the landowner, the natural resources and the citizens of Washington state, in accordance with each landowner's objectives, best management practices, and legal requirements.

(5) "Cooperating organization" means federal, state, and local agencies, colleges and universities, landowner assistance organizations, consultants, forest resource-related industries, and environmental organizations which promote and maintain programs designed to provide information and technical assistance services to nonindustrial forest and woodland owners. [1991 c 27 § 3.]

76.13.020 Authority. In order to accomplish the purposes stated in RCW 76.13.007, the department may:

(1) Establish and maintain a nonindustrial forest and woodland owner assistance program, and through such a program, assist nonindustrial forest and woodland owners in meeting their stewardship objectives.

(2) Provide direct technical assistance through development of management plans, advice, and information to nonindustrial forest land owners to meet their stewardship objectives.

(3) Assist and facilitate efforts of cooperating organizations to provide stewardship education, information, technical assistance, and incentives to nonindustrial forest and woodland owners.

(4) Provide financial assistance to landowners and cooperating organizations.

(5) Appoint a stewardship advisory committee to assist in establishing and operating this program.

(6) Loan or rent surplus equipment to assist cooperating organizations and nonindustrial forest and woodland owners.

(7) Work with local governments to explain the importance of maintaining nonindustrial forests and woodlands.

(8) Take such other steps as are necessary to carry out the purposes of this chapter. [1991 c 27 § 4.]

76.13.030 Funding sources—Fees—Contracts. The department may:

(1) Receive and disburse any and all moneys contributed, allotted, or paid by the United States under authority of any act of congress for the purposes of this chapter.

(2) Receive such gifts, grants, bequests, and endowments and donations of moneys, labor, material, seedlings, and equipment from public or private sources as may be made for the purpose of carrying out the provisions of this chapter and may spend the gifts, grants, bequests, endowments, and donations as well as other moneys from public or private sources according to their terms.

(3) Charge fees for attendance at workshops and conferences, for various publications and other materials which the department may prepare.

(4) Enter into contracts with cooperating organizations having responsibility to carry out programs of similar purposes to this chapter. [1991 c 27 § 5.]

Chapter 76.15

COMMUNITY AND URBAN FORESTRY

Sections

76.15.005	Finding.
76.15.007	Purpose.
76.15.010	Definitions.
76.15.020	Authority.
76.15.030	Funding sources—Fees—Contracts.
76.15.040	Primary duty, department's—Cooperation.

76.15.005 Finding. (1) Trees and other woody vegetation are a necessary and important part of community and urban environments. Community and urban forests have many values and uses including conserving energy, reducing air and water pollution and soil erosion, contributing to property values, attracting business, reducing glare and noise, providing aesthetic and historical values, providing wood products, and affording comfort and protection for humans and wildlife.

(2) As urban and community areas in Washington state grow, the need to plan for and protect community and urban forests increases. Cities and communities benefit from assistance in developing and maintaining community and urban forestry programs that also address future growth.

(3) Assistance and encouragement in establishment, retention, and enhancement of these forests and trees by local governments, citizens, organizations, and professionals are in the interest of the state based on the contributions these forests make in preserving and enhancing the quality of life of Washington's municipalities and counties while providing opportunities for economic development. [1991 c 179 § 1.]

76.15.007 Purpose. The purpose of this chapter is to:

(1) Encourage planting and maintenance and management of trees in the state's municipalities and counties and maximize the potential of tree and vegetative cover in improving the quality of the environment.

(2) Encourage the coordination of state and local agency activities and maximize citizen participation in the development and implementation of community and urban forestry-related programs.

(3) Foster healthy economic activity for the state's community and urban forestry-related businesses through cooperative and supportive contracts with the private business sector.

(4) Facilitate the creation of employment opportunities related to community and urban forestry activities including opportunities for inner city youth to learn teamwork, resource conservation, environmental appreciation, and job skills.

(5) Provide meaningful voluntary opportunities for the state's citizens and organizations interested in community and urban forestry activities. [1991 c 179 § 2.]

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

(1) "Department" means the department of natural resources.

(2) "Person" means an individual, partnership, private or public municipal corporation, Indian tribe, state entity, county or local governmental entity, or association of individuals of whatever nature.

(3) "Community and urban forest" is that land in and around human settlements ranging from small communities to metropolitan areas, occupied or potentially occupied by trees and associated vegetation. Community and urban forest land may be planted or unplanted, used or unused, and includes public and private lands, lands along transportation and utility corridors, and forested watershed lands within populated areas.

(4) "Community and urban forestry" means the planning, establishment, protection, care, and management of trees and associated plants individually, in small groups, or under forest conditions within municipalities and counties.

(5) "Municipality" means a city, town, port district, public school district, community college district, irrigation district, weed control district, park district, or other political subdivision of the state. [1991 c 179 § 3.]

76.15.020 Authority. (1) The department may establish and maintain a program in community and urban forestry to accomplish the purpose stated in RCW 76.15.007. The department may assist municipalities and counties in establishing and maintaining community and urban forestry programs and encourage persons to engage in appropriate and improved tree management and care.

(2) The department may advise, encourage, and assist municipalities, counties, and other public and private entities in the development and coordination of policies, programs, and activities for the promotion of community and urban forestry.

(3) The department may appoint a committee or council to advise the department in establishing and carrying out a program in community and urban forestry.

(4) The department may assist municipal and county tree maintenance programs by making surplus equipment available on loan where feasible for community and urban forestry programs and cooperative projects. [1991 c 179 § 4.]

76.15.030 Funding sources—Fees—Contracts. The department may:

(1) Receive and disburse any and all moneys contributed, allotted, or paid by the United States under authority of any act of congress for the purposes of this chapter.

(2) Receive such gifts, grants, bequests, and endowments and donations of labor, material, seedlings, and equipment from public or private sources as may be made for the purpose of carrying out the provisions of this chapter, and may spend the gifts, grants, bequests, endowments, and donations as well as other moneys from public or private sources.

(3) Charge fees for attendance at workshops and conferences, and for various publications and other materials that the department may prepare.

(4) Enter into agreements and contracts with persons having community and urban forestry-related responsibilities. [1991 c 179 § 5.]

76.15.040 Primary duty, department's—Cooperation. The department shall assume the primary responsibility of carrying out this chapter and shall cooperate with other private and public, state and federal persons, any agency of another state, the United States, any agency of the United States, or any agency or province of Canada. [1991 c 179 § 6.]

Title 77 GAME AND GAME FISH

Chapters

- 77.04 Department of wildlife.**
- 77.12 Powers and duties.**
- 77.16 Prohibited acts and penalties.**
- 77.18 Game fish mitigation.**
- 77.32 Licenses.**

Chapter 77.04 DEPARTMENT OF WILDLIFE

Sections

- 77.04.010 Short title.
- 77.04.055 Wildlife commission—Duties.

77.04.010 Short title. This title is known and may be cited as "Wildlife Code of the State of Washington." [1990 c 84 § 1; 1980 c 78 § 2; 1955 c 36 § 77.04.010. Prior: 1947 c 275 § 1; Rem. Supp. 1947 § 5992–11.]

Effective date—1980 c 78: "This act shall take effect on July 1, 1981." [1980 c 78 § 137.]

Intent, construction—1980 c 78: "In enacting this 1980 act, it is the intent of the legislature to revise and reorganize the game code of this state to clarify and improve the administration of the state's game laws. Unless the context clearly requires otherwise, the revisions made to the game code by this act are not to be construed as substantive." [1980 c 78 § 1.]

Savings—1980 c 78: "This act shall not have the effect of terminating or in any way modifying any proceeding or liability, civil or criminal, which exists on the effective date of this act." [1980 c 78 § 138.]

Severability—1980 c 78: "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." [1980 c 78 § 139.]

77.04.055 Wildlife commission—Duties. (1) In addition to any other duties and responsibilities, the commission shall establish, and periodically review with the governor and the legislature, the department's basic goals and objectives to preserve, protect, and perpetuate wildlife and wildlife habitat. The commission shall maximize hunting and fishing recreational opportunities.

(2) The commission shall establish hunting, trapping, and fishing seasons and prescribe the time, place, manner, and methods that may be used to harvest or enjoy wildlife. [1990 c 84 § 2; 1987 c 506 § 7.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Chapter 77.12 POWERS AND DUTIES

Sections

- 77.12.190 Diversion of wildlife fund moneys prohibited.
- 77.12.195 Repealed.
- 77.12.203 In lieu payments authorized—Procedure—Game lands defined.
- 77.12.655 Habitat buffer zones for bald eagles—Rules.
- 77.12.660 Repealed.
- 77.12.710 Game fish production—Double by year 2000.
- 77.12.720 Firearms range account—Grant program—Rules.
- 77.12.730 Firearms range advisory committee.
- 77.12.740 Firearms range account—Gifts and grants.
- 77.12.900 Migratory waterfowl art committee—Termination.
- 77.12.901 Migratory waterfowl art committee—Repeal.

77.12.190 Diversion of wildlife fund moneys prohibited. Moneys in the state wildlife fund may be used only for the purposes of this title, including the payment of principal and interest on bonds issued for capital projects. [1991 1st sp.s. c 31 § 17; 1987 c 506 § 27; 1980 c 78 § 34; 1955 c 36 § 77.12.190. Prior: 1947 c 275 § 28; Rem. Supp. 1947 § 5992–38.]

Severability—1991 1st sp.s. c 31: See RCW 43.991.900.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.195 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

77.12.203 In lieu payments authorized—Procedure—Game lands defined. (1) Notwithstanding RCW 84.36.010 or other statutes to the contrary, the director shall pay by April 30th of each year on game lands in each county, if requested by an election under RCW 77.12.201, an amount in lieu of real property taxes equal to that amount paid on similar parcels of open space land taxable under chapter 84.34 RCW or the greater of seventy cents per acre per year or the amount paid in 1984 plus an additional amount for control of noxious weeds equal to that which would be paid if such lands were privately owned. This amount shall not be assessed or paid on department buildings, structures, facilities, game farms, fish hatcheries, tidelands, or public fishing areas of less than one hundred acres.

(2) "Game lands," as used in this section and RCW 77.12.201, means those tracts one hundred acres or larger owned in fee by the department and used for wildlife habitat and public recreational purposes. All lands purchased for wildlife habitat, public access or recreation purposes with federal funds in the Snake River drainage basin shall be considered game lands regardless of acreage.

(3) This section shall not apply to lands transferred after April 23, 1990, to the department from other state

agencies. [1990 1st ex.s. c 15 § 11; 1984 c 214 § 2; 1980 c 78 § 37; 1965 ex.s. c 97 § 3.]

Limitations—1990 1st ex.s. c 15: "Amounts saved by operation of section 11 of this act during the 1989–91 fiscal biennium may be used only for financing capital facilities." [1990 1st ex.s. c 15 § 12.]

Severability—1990 1st ex.s. c 15: See note following RCW 43.99H.010.

Effective date—1984 c 214: See note following RCW 77.12.201.

Effective date—**Intent, construction**—**Savings**—**Severability**—1980 c 78: See notes following RCW 77.04.010.

77.12.655 Habitat buffer zones for bald eagles—

Rules. The department, in accordance with chapter 34-.05 RCW, shall adopt and enforce necessary rules defining the extent and boundaries of habitat buffer zones for bald eagles. Rules shall take into account the need for variation of the extent of the zone from case to case, and the need for protection of bald eagles. The rules shall also establish guidelines and priorities for purchase or trade and establishment of conservation easements and/or leases to protect such designated properties. The department shall also adopt rules to provide adequate notice to property owners of their options under RCW 77.12.650 through 77.12.655. [1990 c 84 § 3; 1984 c 239 § 3.]

Legislative declaration—1984 c 239: See note following RCW 77.12.650.

77.12.660 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

77.12.710 Game fish production—Double by year 2000. The legislature hereby directs the department of wildlife to determine the feasibility and cost of doubling the state-wide game fish production by the year 2000. The department shall seek to equalize the effort and investment expended on anadromous and resident game fish programs. The department of wildlife shall provide the legislature with a specific plan for legislative approval that will outline the feasibility of increasing game fish production by one hundred percent over current levels by the year 2000. The plan shall contain specific provisions to increase both hatchery and naturally spawning game fish to a level that will support the production goal established in this section consistent with wildlife commission policies. Steelhead trout, searun cutthroat trout, resident trout, and warmwater fish producing areas of the state shall be included in the plan. The department of wildlife shall provide the plan to the house of representatives and senate ways and means, environment and natural resources, environmental affairs, fisheries and wildlife, and natural resources committees by December 31, 1990.

The plan shall include the following critical elements:

- (1) Methods of determining current catch and production, and catch and production in the year 2000;
- (2) Methods of involving fishing groups, including Indian tribes, in a cooperative manner;
- (3) Methods for using low capital cost projects to produce game fish as inexpensively as possible;

(4) Methods for renovating and modernizing all existing hatcheries and rearing ponds to maximize production capability;

(5) Methods for increasing the productivity of natural spawning game fish;

(6) Application of new technology to increase hatchery and natural productivity;

(7) Analysis of the potential for private contractors to produce game fish for public fisheries;

(8) Methods to optimize public volunteer efforts and cooperative projects for maximum efficiency;

(9) Methods for development of trophy game fish fisheries;

(10) Elements of coordination with the Pacific Northwest Power Council programs to ensure maximum Columbia river benefits;

(11) The role that should be played by private consulting companies in developing and implementing the plan;

(12) Coordination with federal fish and wildlife agencies, Indian tribes, and department of fisheries fish production programs;

(13) Future needs for game fish predator control measures;

(14) Development of disease control measures;

(15) Methods for obtaining access to waters currently not available to anglers; and

(16) Development of research programs to support game fish management and enhancement programs.

The department of wildlife, in cooperation with the department of revenue, shall assess various funding mechanisms and make recommendations to the legislature in the plan. The department of wildlife, in cooperation with the department of trade and economic development, shall prepare an analysis of the economic benefits to the state that will occur when the game fish production is increased by one hundred percent in the year 2000. [1990 c 110 § 2.]

Finding—1990 c 110: "The legislature finds that the anadromous and resident game fish resource of the state can be greatly increased to benefit recreational fishermen and the economy of the state. Investments in the increase of anadromous and resident game fish stocks will provide benefits many times the cost of the program and will act as a catalyst for many additional benefits in the tourism and associated industries, while enhancing the livability of the state." [1990 c 110 § 1.]

77.12.720 Firearms range account—Grant program—Rules. The firearms range account is hereby created in the state general fund. Any funds remaining in the firearm range account established by RCW 77-.12.195, at the time of its repeal by section 7, chapter 195, Laws of 1990, shall be transferred to the firearms range account established in this section. Moneys in the account shall be subject to legislative appropriation and shall be used for purchase and development of land, construction or improvement of range facilities, including fixed structure construction or remodeling, equipment purchase, safety or environmental improvements, noise abatement, and liability protection for public and nonprofit firearm range training and practice facilities.

Grant funds shall not be used for expendable shooting supplies, or normal operating expenses. Grant funds

shall not supplant funds for other organization programs.

The funds will be available to nonprofit shooting organizations, school districts, and state, county, or local governments on a match basis. All ranges receiving matching funds must be open on a regular basis and usable by law enforcement personnel or the general public who possess Washington concealed carry permits or Washington hunting licenses.

Applicants for a grant from the firearms range account shall provide matching funds in either cash or in-kind contributions. The match must represent one dollar in value for each one dollar of the grant. In-kind contributions include but are not limited to labor, materials, and new property. Existing assets and existing development may not apply to the match.

Applicants other than school districts or local or state government must be registered as a nonprofit or not-for-profit organization with the Washington secretary of state and the United States internal revenue service. The organization's articles of incorporation must contain provisions for the organization's structure, officers, legal address, and registered agent.

Organizations requesting grants must provide the hours of range availability for public and law enforcement use. The fee structure will be submitted with the grant application.

Any nonprofit organization or agency accepting a grant under this program will be required to pay back the entire grant amount to the firearms range account if the use of the range facility is discontinued less than ten years after the grant is accepted.

Facilities receiving grants must be open for hunter safety education classes on a regular basis for no fee.

Government units or school districts applying for grants must open their range facility on a regular basis for hunter safety education training.

The interagency committee for outdoor recreation shall adopt rules to implement *this act pursuant to chapter 34.05 RCW. [1990 c 195 § 2.]

***Reviser's note:** For disposition of "this act" see Codification Tables, Supplement Volume 9A.

Findings—1990 c 195: "Firearms are collected, used for hunting, recreational shooting, and self-defense, and firearm owners as well as bow users need safe, accessible areas in which to shoot their equipment. Approved shooting ranges provide that opportunity, while at the same time, promote public safety. Interest in all shooting sports has increased while safe locations to shoot have been lost to the pressures of urban growth." [1990 c 195 § 1.]

77.12.730 Firearms range advisory committee. (1) A ten-member firearms range advisory committee is hereby created to provide advice and counsel to the interagency committee for outdoor recreation. The members shall be appointed by the director of the interagency committee for outdoor recreation from the following groups:

- (a) Law enforcement;
- (b) Washington military department;
- (c) Black powder shooting sports;
- (d) Rifle shooting sports;
- (e) Pistol shooting sports;

- (f) Shotgun shooting sports;
- (g) Archery shooting sports;
- (h) Hunter education;
- (i) Hunters; and
- (j) General public.

(2) The firearms range advisory committee members shall serve two-year terms with five new members being selected each year beginning with the third year of the committee's existence. The firearms range advisory committee members shall not receive compensation from the firearms range account. However, travel and per diem costs shall be paid consistent with regulations for state employees.

(3) The interagency committee for outdoor recreation shall provide administrative, operational, and logistical support for the firearms range advisory committee. Expenses directly incurred for supporting this program may be charged by the interagency committee for outdoor recreation against the firearms range account. Expenses shall not exceed ten percent of the yearly income for the range account.

(4) The interagency committee for outdoor recreation shall in cooperation with the firearms range advisory committee:

- (a) Develop an application process;
- (b) Develop an audit and accountability program;
- (c) Screen, prioritize, and approve grant applications; and
- (d) Monitor compliance by grant recipients.

(5) The department of natural resources, the department of wildlife, and the Washington military department are encouraged to provide land, facilitate land exchanges, and support the development of shooting range facilities. [1990 c 195 § 3.]

Findings—1990 c 195: See note following RCW 77.12.720.

77.12.740 Firearms range account—Gifts and grants. The interagency committee for outdoor recreation may accept gifts and grants upon such terms as the committee shall deem proper. All monetary gifts and grants shall be deposited in the firearms range account of the general fund. [1990 c 195 § 4.]

Findings—1990 c 195: See note following RCW 77.12.720.

77.12.900 Migratory waterfowl art committee—Termination. The migratory waterfowl art committee and its powers and duties shall be terminated on June 30, 1994, as provided in RCW 77.12.901. [1988 c 186 § 3. Formerly RCW 43.131.359.]

77.12.901 Migratory waterfowl art committee—Repeal. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 1995:

- (1) Section 4, chapter 243, Laws of 1985, section 53, chapter 506, Laws of 1987 and RCW 77.12.670;
- (2) Section 5, chapter 243, Laws of 1985, section 54, chapter 506, Laws of 1987 and RCW 77.12.680; and
- (3) Section 6, chapter 243, Laws of 1985, section 55, chapter 506, Laws of 1987 and RCW 77.12.690. [1988 c 186 § 4. Formerly RCW 43.131.360.]

Chapter 77.16 PROHIBITED ACTS AND PENALTIES

Sections

77.16.135 Assault on wildlife agent or other law enforcement—
Revoke licenses and privileges.

77.16.135 Assault on wildlife agent or other law enforcement—Revoke licenses and privileges. (1) The director shall revoke all licenses and privileges extended under Title 77 RCW of a person convicted of assault on a state wildlife agent or other law enforcement officer provided that:

(a) The wildlife agent or other law enforcement officer was on duty at the time of the assault; and

(b) The wildlife agent or other law enforcement officer was enforcing the provisions of Title 77 RCW.

(2) For the purposes of this section, the definition of assault includes:

(a) RCW 9A.32.030; murder in the first degree;

(b) RCW 9A.32.050; murder in the second degree;

(c) RCW 9A.32.060; manslaughter in the first degree;

(d) RCW 9A.32.070; manslaughter in the second degree;

(e) RCW 9A.36.011; assault in the first degree;

(f) RCW 9A.36.021; assault in the second degree; and

(g) RCW 9A.36.031; assault in the third degree.

(3) For the purposes of this section, a conviction includes:

(a) A determination of guilt by the court;

(b) The entering of a guilty plea to the charge or charges by the accused;

(c) A forfeiture of bail or a vacation of bail posted to the court; or

(d) The imposition of a deferred or suspended sentence by the court.

(4) No license described under Title 77 RCW shall be reissued to a person violating this section for a minimum of ten years, at that [which] time a person may petition the director of wildlife for a reinstatement of his or her license or licenses. The ten-year period shall be tolled during any time the convicted person is incarcerated in any state or local correctional or penal institution, in community supervision, or home detention for an offense under this section. Upon review by the director, and if all provisions of the court that imposed sentencing have been completed, the director may reinstate in whole or in part the licenses and privileges under Title 77 RCW. [1991 c 211 § 1.]

Chapter 77.18 GAME FISH MITIGATION

Sections

77.18.005 Public interest declaration.

77.18.010 Definitions.

77.18.020 Specifications—Purchases from aquatic farmers.

77.18.030 Purchases from aquatic farmers for stocking purposes.

Reviser's note—Sunset Act application: The game fish mitigation program is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.375. RCW

77.18.005, 77.18.010, 77.18.020, and 77.18.030 are scheduled for future repeal under RCW 43.131.376.

77.18.005 Public interest declaration. The legislature declares that the public and private propagation, production, protection, and enhancement of fish is in the public interest. [1991 c 253 § 1.]

Sunset Act application: See note following chapter digest.

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

(1) "Department" means the Washington department of wildlife.

(2) "Contract" means an agreement setting at a minimum, price, quantity of fish to be delivered, time of delivery, and fish health requirements.

(3) "Fish health requirements" means those site specific fish health and genetic requirements actually used by the department of wildlife in fish stocking.

(4) "Aquatic farmer" means a private sector person who commercially farms and manages private sector cultured aquatic products on the person's own land or on land in which the person has a present right of possession.

(5) "Person" means a natural person, corporation, trust, or other legal entity. [1991 c 253 § 2.]

Sunset Act application: See note following chapter digest.

77.18.020 Specifications—Purchases from aquatic farmers. If the department requires, pursuant to its authority relative to environmental permits or licenses, that resident hatchery game fish be stocked by the permittee or licensee for mitigation of environmental damage, the department shall specify the pounds or numbers, species, stock, and/or race of resident game fish that are to be provided. The department shall offer the permittee or licensee the option of purchasing under contract from aquatic farmers in Washington, those game fish, unless the fish specified by the department are not available from Washington growers. [1991 c 253 § 3.]

Sunset Act application: See note following chapter digest.

77.18.030 Purchases from aquatic farmers for stocking purposes. Any agency of state or federal government, political subdivision of the state, private or public utility company, corporation, or sports group, or any purchaser of fish under RCW 77.18.020 may purchase resident game fish from an aquatic farmer for stocking purposes if permit requirements of this title and the department have been met. [1991 c 253 § 4.]

Sunset Act application: See note following chapter digest.

Chapter 77.32 LICENSES

Sections

77.32.101 Hunting and fishing licenses—Fees.

77.32.161 Temporary fishing license.

77.32.191 Trapper's license.

- 77.32.211 Taxidermist, fur dealer, fishing guide, game farmer, anadromous game fish buyer—Licenses—Fish stocking and game contest permits.
- 77.32.230 Free licenses—Certain veterans, blind persons, persons with developmental disabilities, physically handicapped persons confined to wheelchair—Use of permanent disability card—Exemption for youths—Purchase of tags, permits, stamps, and punchcards required.
- 77.32.235 Group permits—Exemption from individual license and fee requirement—Conditions.
- 77.32.240 Scientific permit—Procedures—Penalties—Fee.
- 77.32.256 Duplicate licenses, permits, tags, stamps, and punchcards.
- 77.32.320 Transport tags for game.
- 77.32.340 Transport tag fees.
- 77.32.350 Hound permit, upland game bird permit, falconry license, and migratory waterfowl stamp—Fees, procedures.
- 77.32.360 Steelhead catch record card—Fees, procedures.
- 77.32.370 Special hunting season permits—Fee.
- 77.32.380 Conservation license—License required for persons parking on department lands or using game access facilities.

77.32.101 Hunting and fishing licenses—Fees. (1) A hunting and fishing license allows a resident holder to hunt and fish throughout the state. The fee for this license is twenty-nine dollars.

(2) A hunting license allows the holder to hunt throughout the state. The fee for this license is fifteen dollars for residents and one hundred fifty dollars for nonresidents.

(3) A fishing license allows the holder to fish throughout the state. The fee for this license is seventeen dollars for residents fifteen years of age or older and under seventy years of age, three dollars for residents seventy years of age or older, and forty-eight dollars for nonresidents. [1991 1st sp.s. c 7 § 1; 1985 c 464 § 2; 1981 c 310 § 20; 1980 c 78 § 110; 1975 1st ex.s. c 15 § 20.]

Effective date—1991 1st sp.s. c 7: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 1st sp.s. c 7 § 14.]

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

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.]

77.32.161 Temporary fishing license. A nonresident or resident may obtain a temporary fishing license, which allows the holder to fish throughout the state for three consecutive days. The fee for this license is nine dollars for residents and seventeen dollars for nonresidents. The resident temporary fishing license is not valid for an eight consecutive day period beginning on the opening day of the lowland lake fishing season. [1991 1st sp.s. c 7 § 2; 1985 c 464 § 3; 1981 c 310 § 22; 1980 c 78 § 112; 1975 1st ex.s. c 15 § 27.]

Effective date—1991 1st sp.s. c 7: See note following RCW 77.32.101.

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.101.

77.32.191 Trapper's license. A state trapping license allows the holder to trap fur-bearing animals throughout the state; however, a trapper may not place traps on private property without permission of the owner, lessee, or tenant where the land is improved and apparently used, or where the land is fenced or enclosed in a manner designed to exclude intruders or to indicate a property boundary line, or where notice is given by posting in a conspicuous manner. A state trapping license is void on April 1st following the date of issuance. The fee for this license is thirty-six dollars for residents sixteen years of age or older, fifteen dollars for residents under sixteen years of age, and one hundred eighty dollars for nonresidents. [1991 1st sp.s. c 7 § 3; 1987 c 372 § 3; 1985 c 464 § 4; 1981 c 310 § 23. Prior: 1980 c 78 § 113; 1980 c 24 § 2; 1975 1st ex.s. c 15 § 28.]

Effective date—1991 1st sp.s. c 7: See note following RCW 77.32.101.

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.101.

Traps placed on private property: RCW 77.16.170, 77.21.010, 77.32.199.

77.32.211 Taxidermist, fur dealer, fishing guide, game farmer, anadromous game fish buyer—Licenses—Fish stocking and game contest permits. (1) A taxidermy license allows the holder to practice taxidermy for profit. The fee for this license is one hundred eighty dollars.

(2) A fur dealer's license allows the holder to purchase, receive, or resell raw furs for profit. The fee for this license is one hundred eighty dollars.

(3) A fishing guide license allows the holder to offer or perform the services of a professional guide in the taking of game fish. The fee for this license is one hundred eighty dollars for a resident and six hundred dollars for a nonresident.

(4) A game farm license allows the holder to operate a game farm to acquire, breed, grow, keep, and sell wildlife under conditions prescribed by the rules adopted pursuant to this title. The fee for this license is seventy-two dollars for the first year and forty-eight dollars for each following year.

(5) A game fish stocking permit allows the holder to release game fish into the waters of the state as prescribed by rule of the commission. The fee for this permit is twenty-four dollars.

(6) A fishing or field trial permit allows the holder to promote, conduct, hold, or sponsor a fishing or field trial contest in accordance with rules of the commission. The

fee for a fishing contest permit is twenty-four dollars. The fee for a field trial contest permit is twenty-four dollars.

(7) An anadromous game fish buyer's license allows the holder to purchase or sell steelhead trout and other anadromous game fish harvested by Indian fishermen lawfully exercising fishing rights reserved by federal statute, treaty, or executive order, under conditions prescribed by rule of the director. The fee for this license is one hundred eighty dollars. [1991 1st sp.s. c 7 § 4; 1987 c 506 § 83; 1985 c 464 § 5; 1983 c 284 § 3; 1981 c 310 § 25; 1980 c 78 § 115; 1975 1st ex.s. c 15 § 30.]

Effective date—1991 1st sp.s. c 7: See note following RCW 77.32.101.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1985 c 464: See note following RCW 77.32.060.

Findings—**Intent**—1983 c 284: See note following RCW 82.27.020.

Effective dates—**Legislative intent**—1981 c 310: See notes following RCW 77.12.170.

Effective date—**Intent, construction**—**Savings**—**Severability**—1980 c 78: See notes following RCW 77.04.010.

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.101.

77.32.230 Free licenses—**Certain veterans, blind persons, persons with developmental disabilities, physically handicapped persons confined to wheelchair**—**Use of permanent disability card**—**Exemption for youths**—**Purchase of tags, permits, stamps, and punchcards required.** (1) A person sixty-five years of age or older who is an honorably discharged veteran of the United States armed forces having a service-connected disability and who has been a resident for five years may receive upon application a state hunting and fishing license free of charge.

(2) A blind person, or a person with a developmental disability as defined in RCW 71A.10.020 with documentation of the disability from the department of social and health services, or a physically handicapped person confined to a wheelchair may receive upon application a fishing license free of charge.

(3) A blind person or a physically handicapped person confined to a wheelchair who has been issued a card for a permanent disability under RCW 46.16.381 may use that card in place of a fishing license unless tags, permits, stamps, or punchcards are required by this chapter.

(4) A fishing license is not required for persons under the age of fifteen.

(5) Tags, permits, stamps, and punchcards required by this chapter shall be purchased separately by persons receiving a free or reduced-fee license. [1991 1st sp.s. c 7 § 5; 1988 c 176 § 914; 1987 c 506 § 85; 1985 c 464 § 6; 1985 c 182 § 2; 1983 c 280 § 1; 1981 c 310 § 27; 1980 c 78 § 117; 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.]

Effective date—1991 1st sp.s. c 7: See note following RCW 77.32.101.

Severability—1988 c 176: See RCW 71A.10.900.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—**Legislative intent**—1981 c 310: See notes following RCW 77.12.170.

Effective date—**Intent, construction**—**Savings**—**Severability**—1980 c 78: See notes following RCW 77.04.010.

77.32.235 Group permits—**Exemption from individual license and fee requirement**—**Conditions.** Physically or mentally handicapped persons, hospital patients, and senior citizens may fish for game fish during open season without individual licenses or the payment of individual license fees if such fishing activity is occasional, is conducted in a group supervised by staff of a state-licensed or state-operated care facility, and the facility holds a group fishing permit issued by the director. The director shall issue such a permit upon application by care facility staff. [1990 c 35 § 4; 1984 c 33 § 1.]

Intent—1990 c 35: See note following RCW 75.25.200.
Food fish and shellfish: RCW 75.25.190.

77.32.240 Scientific permit—**Procedures**—**Penalties**—**Fee.** A scientific permit allows the holder to collect for research or display wildlife or their nests and eggs as required in RCW 77.32.010 under conditions prescribed by the director. Before a permit is issued, the applicant shall demonstrate to the director their qualifications and establish the need for the permit. The director may require a bond of up to one thousand dollars to insure compliance with the permit. Permits are valid for the time specified, unless sooner revoked.

Holders of permits may exchange specimens with the approval of the director.

A permit holder who violates this section shall forfeit the permit and bond and shall not receive a similar permit for one year. The fee for a scientific permit is twelve dollars. [1991 1st sp.s. c 7 § 6; 1981 c 310 § 28; 1980 c 78 § 119; 1955 c 36 § 77.32.240. Prior: 1947 c 275 § 113; Rem. Supp. 1947 § 5992-122.]

Effective date—1991 1st sp.s. c 7: See note following RCW 77.32.101.

Effective dates—**Legislative intent**—1981 c 310: See notes following RCW 77.12.170.

Effective date—**Intent, construction**—**Savings**—**Severability**—1980 c 78: See notes following RCW 77.04.010.

77.32.256 Duplicate licenses, permits, tags, stamps, and punchcards. The director shall by rule establish the conditions for issuance of duplicate licenses, permits, tags, stamps, and punchcards required by this chapter. The fee for a duplicate provided under this section is ten dollars. [1991 1st sp.s. c 7 § 7; 1987 c 506 § 86; 1985 c 464 § 7; 1981 c 310 § 30; 1980 c 78 § 121; 1975 1st ex.s. c 15 § 32.]

Effective date—1991 1st sp.s. c 7: See note following RCW 77.32.101.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—**Legislative intent**—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.101.

77.32.320 Transport tags for game. (1) In addition to a basic hunting license, a separate transport tag is required to hunt deer, elk, bear, cougar, sheep, mountain goat, moose, or wild turkey.

(2) A transport tag may only be obtained subsequent to the purchase of a valid hunting license and must have permanently affixed to it the hunting license number.

(3) Persons who kill deer, elk, bear, cougar, mountain goat, sheep, moose, or wild turkey shall immediately validate and attach their own transport tag to the carcass as provided by rule of the director.

(4) Transport tags required by this section expire on March 31st following the date of issuance. [1990 c 84 § 4; 1987 c 506 § 87; 1981 c 310 § 8.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

77.32.340 Transport tag fees. Fees for transport tags shall be as follows:

(1) The fee for a resident deer tag is eighteen dollars. The fee for a nonresident deer tag is sixty dollars.

(2) The fee for a resident elk tag is twenty-four dollars. The fee for a nonresident elk tag is one hundred twenty dollars.

(3) The fee for a resident bear tag is eighteen dollars. The fee for a nonresident bear tag is one hundred eighty dollars.

(4) The fee for a resident cougar tag is twenty-four dollars. The fee for a nonresident cougar tag is three hundred sixty dollars.

(5) The fee for a mountain goat tag is sixty dollars for residents and one hundred eighty dollars for nonresidents. The fee shall be paid at the time of application. Applicants who are not selected for a mountain goat special season permit shall receive a refund of this fee, less five dollars.

(6) The fee for a sheep tag is ninety dollars for residents and three hundred sixty dollars for nonresidents and shall be paid at the time of application. Applicants who are not selected for a sheep special season permit shall receive a refund of this fee, less five dollars.

(7) The fee for a moose tag is one hundred eighty dollars for residents and three hundred sixty dollars for nonresidents and shall be paid at the time of application. Applicants who are not selected for a moose special season permit shall receive a refund of this fee, less five dollars.

(8) The fee for a wild turkey tag is eighteen dollars for residents and sixty dollars for nonresidents.

(9) The fee for a lynx tag is twenty-four dollars for residents and three hundred sixty dollars for nonresidents and shall be paid at the time of application. Applicants who are not selected for a lynx special season permit shall receive a refund of this fee, less five dollars.

[1991 1st sp.s. c 7 § 8; 1990 c 84 § 5; 1985 c 464 § 8; 1984 c 240 § 5; 1981 c 310 § 11.]

Effective date—1991 1st sp.s. c 7: See note following RCW 77.32.101.

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

77.32.350 Hound permit, upland game bird permit, falconry license, and migratory waterfowl stamp—Fees, procedures. In addition to a basic hunting license, a supplemental license, permit, or stamp is required to hunt for quail, partridge, pheasant, or migratory waterfowl, to hunt with a raptor, or to hunt wild animals with a dog.

(1) A hound permit is required to hunt wild animals, except rabbits and hares, with a dog. The fee for this permit is twelve dollars.

(2) An eastern Washington upland game bird permit is required to hunt for quail, partridge, and pheasant in eastern Washington. The fee for this permit is ten dollars.

(3) A western Washington upland game bird permit is required to hunt for quail, partridge, and pheasant in western Washington. The fee for this permit is thirty-five dollars. Effective January 1, 1992, the permit shall be available as a season option, an early season option, a late season option, a juvenile full season option or a two-day option. The fee for this permit is:

(a) For the full season option, thirty-five dollars;

(b) For the early season option, twenty-five dollars;

(c) For the late season option, twenty-five dollars;

(d) For the juvenile full season or the two-day option, twenty dollars.

For the purposes of this subsection a juvenile is defined as a person under fifteen years of age upon the opening date of the western Washington pheasant season.

(4) A falconry license is required to possess or hunt with a raptor, including seasons established exclusively for hunting in that manner. The fee for this license is thirty-six dollars.

(5) A migratory waterfowl stamp affixed to a basic hunting license is required for all persons sixteen years of age or older to hunt migratory waterfowl. The fee for the stamp is six dollars.

(6) The migratory waterfowl stamp shall be validated by the signature of the licensee written across the face of the stamp.

(7) The migratory waterfowl stamps required by this section expire on March 31st following the date of issuance. [1991 1st sp.s. c 7 § 9; 1990 c 84 § 6; 1989 c 365 § 1; 1987 c 506 § 105. Prior: 1985 c 464 § 9; 1985 c 243 § 1; 1984 c 240 § 6; 1981 c 310 § 12.]

Effective date—1991 1st sp.s. c 7: See note following RCW 77.32.101.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

77.32.360 Steelhead catch record card—Fees, procedures. (1) A steelhead catch record card is required to fish for steelhead trout. The fee for this catch record card is eighteen dollars.

(2) Persons possessing steelhead trout shall immediately validate their catch record card as provided by rule.

(3) The steelhead catch record card required under this section expires April 30th following the date of issuance.

(4) Each person who returns a steelhead catch record card to an authorized license dealer by June 1 following the period for which it was issued shall be given a credit equal to five dollars towards that day's purchase of any license, permit, transport tag, catch record card, or stamp required by this chapter. This subsection does not apply to annual steelhead catch record cards for persons under the age of fifteen.

(5) Persons under the age of fifteen may purchase an annual steelhead catch record card for six dollars. The six-dollar catch record card entitles the holder to retain no more than five steelhead. After retaining five steelhead, a new catch record card may be purchased. [1991 1st sp.s. c 7 § 10; 1990 c 84 § 7; 1987 c 506 § 88; 1985 c 464 § 10; 1981 c 310 § 13.]

Effective date—1991 1st sp.s. c 7: See note following RCW 77.32.101.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

77.32.370 Special hunting season permits—Fee.

(1) A special hunting season permit is required to hunt in each special season established under chapter 77.12 RCW.

(2) Persons may apply for special hunting season permits as provided by rule of the director.

(3) The application fee to participate in a special hunting season is three dollars. [1991 1st sp.s. c 7 § 11; 1987 c 506 § 89; 1984 c 240 § 7; 1981 c 310 § 14.]

Effective date—1991 1st sp.s. c 7: See note following RCW 77.32.101.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

77.32.380 Conservation license—License required for persons parking on department lands or using game access facilities. Persons sixteen years of age or older who use clearly identified department lands and access facilities are required to possess a conservation license or a hunting, fishing, trapping, or free license on their person while using the facilities. The fee for this license is ten dollars annually.

The spouse, all children under eighteen years of age, and guests under eighteen years of age of the holder of a valid conservation license may use department lands and access facilities when accompanied by the license holder.

Youth groups may use department lands and game access facilities without possessing a conservation license when accompanied by a license holder.

The conservation license is nontransferable and must be validated by the signature of the holder. Upon request of a wildlife agent or ex officio wildlife agent a person using clearly identified department of wildlife lands shall exhibit the required license. [1991 1st sp.s. c 7 § 12; 1988 c 36 § 52; 1987 c 506 § 90; 1985 c 464 § 11; 1981 c 310 § 15.]

Effective date—1991 1st sp.s. c 7: See note following RCW 77.32.101.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Title 79 PUBLIC LANDS

Chapters

- 79.01** Public lands act.
- 79.08** General provisions.
- 79.12** Sales and leases of public lands and materials.
- 79.64** Funds for managing and administering lands.
- 79.71** Washington natural resources conservation areas.
- 79.72** Scenic river system.
- 79.90** Aquatic lands—In general.
- 79.96** Aquatic lands—Oysters, geoducks, shellfish, and other aquacultural uses.

Chapter 79.01

PUBLIC LANDS ACT

Sections

- 79.01.006 Charitable, educational, penal, and reformatory real property—Inventory—Transfer.
- 79.01.007 Charitable, educational, penal, and reformatory real property—High economic return potential—Income.
- 79.01.135 Recodified as RCW 79.90.325.
- 79.01.765 Rewards for information regarding violations.
- 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.

79.01.006 Charitable, educational, penal, and reformatory real property—Inventory—Transfer. (1) Every five years the department of social and health services and other state agencies that operate institutions shall conduct an inventory of all real property subject to the charitable, educational, penal, and reformatory institution account and other real property acquired for institutional purposes or for the benefit of the blind, deaf, mentally ill, developmentally disabled, or otherwise disabled. The inventory shall identify which of those real properties are not needed for state-provided residential care, custody, or treatment. By December 1, 1992, and

every five years thereafter the department shall report the results of the inventory to the house of representatives committee on capital facilities and financing, the senate committee on ways and means, and the legislative budget committee.

(2) Real property identified as not needed for state-provided residential care, custody, or treatment shall be transferred to the corpus of the charitable, educational, penal, and reformatory institution account. This subsection shall not apply to real property subject to binding conditions that conflict with the other provisions of this subsection.

(3) The department of natural resources shall manage all property subject to the charitable, educational, penal, and reformatory institution account and, in consultation with the department of social and health services and other affected agencies, shall adopt a plan for the management of real property subject to the account and other real property acquired for institutional purposes or for the benefit of the blind, deaf, mentally ill, developmentally disabled, or otherwise disabled.

(a) The plan shall be consistent with state trust land policies and shall be compatible with the needs of institutions adjacent to real property subject to the plan.

(b) The plan may be modified as necessary to ensure the quality of future management and to address the acquisition of additional real property. [1991 c 204 § 1.]

Department of social and health services duty: RCW 43.20A.035.

79.01.007 Charitable, educational, penal, and reformatory real property—High economic return potential—Income. Where C.E.P. & R.I. land has the potential for lease for commercial, industrial, or residential uses or other uses with the potential for high economic return and is within urban or suburban areas, the department of natural resources shall make every effort consistent with trust land management principles and all other provisions of law to lease the lands for such purposes, unless the land is subject to a lease to a state agency operating an existing state institution. The department of natural resources is authorized, subject to approval by the board of natural resources and only if a higher return can be realized, to exchange such lands for lands of at least equal value and to sell such lands and use the proceeds to acquire replacement lands. The department shall report to the appropriate legislative committees all C.E.P. & R.I. land purchased, sold, or exchanged. Income from the leases shall be deposited in the charitable, educational, penal, and reformatory institutions account. The legislature shall give priority consideration to appropriating one-half of the money derived from lease income to providing community housing for persons who are mentally ill, developmentally disabled, or youth who are blind, deaf, or otherwise disabled. [1991 c 204 § 5.]

79.01.135 Recodified as RCW 79.90.325. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

79.01.765 Rewards for information regarding violations. The department of natural resources is authorized to offer and pay a reward not to exceed one thousand dollars in each case for information regarding violations of any statute or rule adopted pursuant to any statute relating to the state's public lands and natural resources including, but not limited to, Titles 75, 76, 78, and 79 RCW, and any rule adopted pursuant thereto. No reward may be paid to any federal, state, or local government or agency employees for information obtained by them in the normal course of their employment. The department of natural resources is authorized to promulgate rules in pursuit of its authority under this section to determine the appropriate account or fund from which to pay the reward. No appropriation shall be required for disbursement. [1990 c 163 § 8.]

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 RCW 28A.525.010 through 28A.525.222 and shall be payable out of the common school construction fund as otherwise provided for in RCW 28A.515.320 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. [1990 c 33 § 596; 1971 ex.s. c 200 § 3.]

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

Severability—1971 ex.s. c 200: See note following RCW 79.01.096.

Chapter 79.08 GENERAL PROVISIONS

Sections

79.08.170 Transfer of county auditor's duties to county treasurer.

79.08.170 Transfer of county auditor's duties to county treasurer. The duties of the county auditor in each county with a population of two hundred ten thousand or more, with regard to sales and leases of the state lands dealt with under Title 79 RCW except RCW 79.01.100, 79.01.104, and 79.94.040, are transferred to the county treasurer. [1991 c 363 § 152; 1983 c 3 § 201; 1955 c 184 § 1.]

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

Chapter 79.12 SALES AND LEASES OF PUBLIC LANDS AND MATERIALS

Sections

79.12.095 Geothermal resources—Guidelines for development.

79.12.095 Geothermal resources—Guidelines for development. In an effort to increase potential revenue to the geothermal account, the department of natural resources shall, by December 1, 1991, adopt rules providing guidelines and procedures for leasing state-owned land for the development of geothermal resources. [1991 c 76 § 3.]

Geothermal account: Chapter 43.140 RCW.

Chapter 79.64

FUNDS FOR MANAGING AND ADMINISTERING LANDS

Sections

79.64.055 Repealed.

79.64.055 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 79.71

WASHINGTON NATURAL RESOURCES CONSERVATION AREAS

Sections

- 79.71.010 Legislative findings.
- 79.71.020 Characteristics of lands considered for conservation purposes.
- 79.71.030 Definitions.
- 79.71.050 Transfer of trust land for natural resources conservation areas—Use of proceeds.
- 79.71.060 Public hearing on proposed conservation area.
- 79.71.070 Management plans for designated areas.
- 79.71.080 Administration of natural resources conservation areas—Management agreements and activities.
- 79.71.090 Natural resources conservation areas stewardship account.
- 79.71.110 Repealed.

79.71.010 Legislative findings. The legislature finds that: (1) There is an increasing and continuing need by the people of Washington for certain areas of the state to be conserved, in rural as well as urban settings, for the benefit of present and future generations; (2) such areas are worthy of conservation for their outstanding scenic and ecological values and provide opportunities for low-impact public use; (3) in certain cases acquisition of property or rights in property is necessary to protect these areas for public purposes; and (4) there is a need for a state agency to act in an effective and timely manner to acquire interests in such areas and to develop appropriate management strategies for conservation purposes. [1991 c 352 § 1; 1987 c 472 § 1.]

79.71.020 Characteristics of lands considered for conservation purposes. Lands possessing the following characteristics are considered by the legislature to be worthy of consideration for conservation purposes:

(1) Lands identified as having high priority for conservation, natural systems, wildlife, and low-impact public use values;

(2) An area of land or water, or land and water, that has flora, fauna, geological, archaeological, scenic, or similar features of critical importance to the people of Washington and that has retained to some degree or has reestablished its natural character;

(3) Examples of native ecological communities; and

(4) Environmentally significant sites threatened with conversion to incompatible or ecologically irreversible uses. [1991 c 352 § 2; 1987 c 472 § 2.]

79.71.030 Definitions. As used in this chapter:

"Commissioner" means the commissioner of public lands.

"Department" means the department of natural resources.

"Conservation purposes" include but are not limited to: (1) Maintaining, enhancing, or restoring ecological systems, including but not limited to aquatic, coastal, riparian, montane, and geological systems, whether such systems be unique or typical to the state of Washington; (2) maintaining exceptional scenic landscapes; (3) maintaining habitat for threatened, endangered, and sensitive species; (4) enhancing sites for primitive recreational purposes; and (5) outdoor environmental education.

"Low-impact public use" includes public recreation uses and improvements that do not adversely affect the resource values, are appropriate to the maintenance of the site in a relatively unmodified natural setting, and do not detract from long-term ecological processes.

"Management activities" may include limited production of income from forestry, agriculture, or other resource management activities, if such actions are consistent with the other purposes and requirements of this chapter.

"Natural resources conservation area" or "conservation area" means an area having the characteristics identified in RCW 79.71.020. [1991 c 352 § 3; 1987 c 472 § 3.]

79.71.050 Transfer of trust land for natural resources conservation areas—Use of proceeds. The department is authorized to transfer fee simple interest or less than fee interests in trust land, as defined by Article XVI of the Washington Constitution, for the creation of natural resources conservation areas, provided the owner of the trust land receives full fair market value compensation for all rights transferred. The proceeds from such transfers shall be used for the exclusive purpose of acquiring real property to replace those interests utilized for the conservation area in order to meet the department's fiduciary obligations and to maintain the productive land base of the various trusts. [1991 c 352 § 4; 1987 c 472 § 5.]

79.71.060 Public hearing on proposed conservation area. The department shall hold a public hearing in the county where the majority of the land in the proposed natural resources conservation area is located prior to

establishing the boundary. An area proposed for designation must contain resources consistent with characteristics identified in RCW 79.71.020. [1991 c 352 § 5; 1987 c 472 § 6.]

79.71.070 Management plans for designated areas. The department shall develop a management plan for each designated area. The plan shall identify the significant resources to be conserved consistent with the purposes of this chapter and identify the areas with potential for low-impact public and environmental educational uses. The plan shall specify what types of management activities and public uses that are permitted, consistent with the conservation purposes of this chapter. The department shall make such plans available for review and comment by the public and other state, tribal, and local agencies, prior to final approval by the commissioner. [1991 c 352 § 6; 1987 c 472 § 7.]

79.71.080 Administration of natural resources conservation areas—Management agreements and activities. The department is authorized to administer natural resources conservation areas and may enter into management agreements for these areas with federal agencies, state agencies, local governments, and private nonprofit conservancy corporations, as defined in RCW 64.04.130, when such agreements are consistent with the purposes of acquisition as defined in the adopted management plan. All management activities within a Washington natural resources conservation area will conform with the plan. Any moneys derived from the management of these areas in conformance with the adopted plan shall be deposited in the natural resources conservation areas stewardship account. [1991 c 352 § 7; 1987 c 472 § 8.]

79.71.090 Natural resources conservation areas stewardship account. There is hereby created the natural resources conservation areas stewardship account in the state treasury to ensure proper and continuing management of land acquired or designated pursuant to this chapter. Funds for the stewardship account shall be derived from appropriations of state general funds, federal funds, grants, donations, gifts, bond issue receipts, securities, and other monetary instruments of value. Income derived from the management of natural resources conservation areas shall also be deposited in this stewardship account.

Appropriations from this account to the department shall be expended for no other purpose than the following: (1) To manage the areas approved by the legislature in fulfilling the purposes of this chapter; (2) to manage property acquired as natural area preserves under chapter 79.70 RCW; (3) to manage property transferred under the authority and appropriation provided by the legislature to be managed under chapter 79.70 RCW or this chapter or acquired under chapter 43.98A RCW; and (4) to pay for operating expenses for the natural heritage program under chapter 79.70 RCW. [1991 1st sp.s. c 13 § 118; 1991 c 352 § 8; 1987 c 472 § 9.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Account balance—1991 c 352: "Two million dollars from the existing stewardship account balance shall remain in the account to create an endowment." [1991 c 352 § 10.]

79.71.110 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 79.72 SCENIC RIVER SYSTEM

Sections

79.72.080 Rivers designated as part of system.

79.72.080 Rivers designated as part of system. The following rivers of the state of Washington are hereby designated as being in the scenic river system of the state of Washington:

(1) The Skykomish river from the junction of the north and south forks of the Skykomish river:

(a) Downstream approximately fourteen miles to its junction with the Sultan river;

(b) Upstream approximately twenty miles on the south fork to the junction of the Tye and Foss rivers;

(c) Upstream approximately eleven miles on the north fork to its junction with Bear creek;

(2) The Beckler river from its junction with the south fork of the Skykomish river upstream approximately eight miles to its junction with Rapid river;

(3) The Tye river from its junction with the south fork of the Skykomish river upstream approximately fourteen miles to Tye Lake; and

(4) The Little Spokane river from the upstream boundary of the state park boat put-in site near Rutter parkway and downstream to its confluence with the Spokane river. [1991 c 206 § 1; 1977 ex.s. c 161 § 8.]

Green river gorge conservation area: RCW 43.51.900 through 43.51.930.

Washington state Yakima river conservation area: RCW 43.51.946 through 43.51.956.

Chapter 79.90 AQUATIC LANDS—IN GENERAL

Sections

79.90.130 Valuable materials from Columbia river—Agreements with Oregon.

79.90.140 Repealed.

79.90.150 Material removed for channel or harbor improvement or flood control—Use for public purpose.

79.90.210 Sale procedure—Sales at auction or by sealed bid—Minimum price—Exception as to minor sale of valuable materials at auction.

79.90.215 Highest responsible bidder—Determination.

79.90.240 Sale procedure—Confirmation of sale.

79.90.300 Sale of rock, gravel, sand, silt, and other valuable materials.

79.90.325 Contract for sale of rock, gravel, etc.—Royalties—Consideration of flood protection value.

79.90.520 Aquatic lands—Administrative review of proposed rent.

79.90.535 Aquatic lands—Interest rate.

79.90.555 Aquatic land dredged material disposal site account.

79.90.130 Valuable materials from Columbia river—Agreements with Oregon. The department 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 the department will assist the state of Washington and the state of Oregon in securing the maximum revenues for sand, gravel or other valuable materials taken from the bed of the Columbia river where said river forms the boundary line between said states. [1991 c 322 § 24; 1982 1st ex.s. c 21 § 19.]

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

79.90.140 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

79.90.150 Material removed for channel or harbor improvement or flood control—Use for public purpose. When gravel, rock, sand, silt or other material from any aquatic lands 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: **PROVIDED,** That the department may authorize such public agency or private landowner to dispose of such material without charge when necessary to implement disposal of material. No charge shall be required for any use of the material obtained under the provisions of this chapter when used solely on an authorized site. No charge shall be required for any use of the material obtained under the provisions of this chapter if the material is used for public purposes by local governments. Public purposes include, but are not limited to, construction and maintenance of roads, dikes, and levies. 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 or federal agencies as otherwise required by law. [1991 c 337 § 1; 1982 1st ex.s. c 21 § 21.]

79.90.210 Sale procedure—Sales at auction or by sealed bid—Minimum price—Exception as to minor sale of valuable materials at auction. All sales of tidelands and shorelands belonging to the state, otherwise

permitted by RCW 79.94.150 to be sold, shall be at public auction and all sales of valuable materials shall be at public auction or by sealed bid to the highest responsible bidder, on the terms prescribed by law and as specified in the notice provided, and no land or materials shall be sold for less than their appraised value: **PROVIDED,** That when valuable material has been appraised at an amount not exceeding one hundred thousand dollars, the department of natural resources, 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 department may prescribe, after the department shall have caused to be published not less than ten days prior to sale a notice of such sale in a newspaper of general circulation located nearest to the property to be sold. However, any sale of valuable material on aquatic lands of an appraised value of ten thousand dollars or less may be sold directly to the applicant for cash without notice or advertising. [1990 c 163 § 1; 1982 1st ex.s. c 21 § 27.]

79.90.215 Highest responsible bidder—Determination. (1) To determine the "highest responsible bidder" under RCW 79.90.210, the department of natural resources shall be entitled to consider, in addition to price, the following:

- (a) The financial and technical ability of the bidder to perform the contract;
- (b) Whether the bid contains material defects;
- (c) Whether the bidder has previously or is currently complying with terms and conditions of any other contracts with the state or relevant contracts with entities other than the state;
- (d) Whether the bidder has been convicted of a crime relating to the public lands or natural resources of the state of Washington, the United States, or any other state, tribe, or country, where "conviction" shall include a guilty plea, or unvacated forfeiture of bail;
- (e) Whether the bidder is owned, controlled, or managed by any person, partnership, or corporation that is not responsible under this statute; and
- (f) Whether the subcontractors of the bidder, if any, are responsible under this statute.

(2) Whenever the department has reason to believe that the apparent high bidder is not a responsible bidder, the department may award the sale to the next responsible bidder or the department may reject all bids pursuant to RCW 79.90.240. [1990 c 163 § 2.]

79.90.240 Sale procedure—Confirmation of sale. (1) A sale of valuable materials or tidelands or shorelands otherwise permitted by RCW 79.94.150 to be sold shall be confirmed if:

- (a) No affidavit showing that the interest of the state in such sale was injuriously affected by fraud or collusion, is filed with the commissioner of public lands within ten days from the receipt of the report of the auctioneer conducting the sale;

(b) It shall appear from such report that the sale was fairly conducted, that the purchaser was the highest responsible bidder at such sale, and that the sale price is not less than the appraised value of the property sold;

(c) The commissioner is satisfied that the lands or material sold would not, upon being readvertised and offered for sale, sell for a substantially higher price; and

(d) 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.

(2) Upon confirming a sale, the commissioner shall enter upon his records the confirmation of sale and thereupon issue to the purchaser a contract of sale or bill of sale as the case may be, as is provided for in this chapter. [1990 c 163 § 3; 1982 1st ex.s. c 21 § 30.]

79.90.300 Sale of rock, gravel, sand, silt, and other valuable materials. The department of natural resources, upon application by any person or when determined by the department to be in the best interest of the state, may enter into a contract or lease providing for the removal and sale of rock, gravel, sand, and silt, or other valuable materials located within or upon beds of navigable waters, or upon any tidelands or shorelands belonging to the state and providing for payment to be made therefor by such royalty as the department may fix, by negotiation, by sealed bid, or at public auction. If application is made for the purchase of any valuable material situated within or upon aquatic lands the department shall inspect and appraise the value of the material in the application. [1991 c 322 § 26; 1982 1st ex.s. c 21 § 36.]

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

79.90.325 Contract for sale of rock, gravel, etc.—Royalties—Consideration of flood protection value. Whenever, pursuant to RCW 79.01.134, the commissioner of public lands enters into a contract for the sale and removal of rock, gravel, sand, or silt out of a riverbed, the commissioner shall, when establishing a royalty, take into consideration flood protection value to the public that will arise as a result of such removal. [1984 c 212 § 10. Formerly RCW 79.01.135.]

79.90.520 Aquatic lands—Administrative review of proposed rent. The manager shall, by rule, provide for an administrative review of any aquatic land rent proposed to be charged. The rules shall require that the lessee or applicant for release file a request for review within thirty days after the manager has notified the lessee or applicant of the rent due. For leases issued by the department, the final authority for the review rests with the board of natural resources. For leases managed under RCW 79.90.475, the final authority for the review rests with the appropriate port commission. If the request for review is made within thirty days after the manager's final determination as to the rental, the lessee may pay rent at the preceding year's rate pending completion of the review, and shall pay any additional rent or be entitled to a refund, with interest thirty days after

announcement of the decision. 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. Nothing in this section abrogates the right of an aggrieved party to pursue legal remedies. For purposes of this section, "manager" is the department except where state-owned aquatic lands are managed by a port district, in which case "manager" is the port district. [1991 c 64 § 1; 1984 c 221 § 15.]

79.90.535 Aquatic lands—Interest rate. The interest rate and all interest rate guidelines 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. [1991 c 64 § 2; 1984 c 221 § 18.]

79.90.555 Aquatic land dredged material disposal site account. The aquatic land dredged material disposal site account is hereby established in the state treasury. The account shall consist of funds appropriated to the account; funds transferred or paid to the account pursuant to settlements; court or administrative agency orders or judgments; gifts and grants to the account; and all funds received by the department of natural resources from users of aquatic land dredged material disposal sites. After appropriation, moneys in the fund may be spent only for the management and environmental monitoring of aquatic land dredged material disposal sites. The account is subject to the allotment procedure provided under chapter 43.88 RCW. [1991 1st sp.s. c 13 § 63; 1987 c 259 § 2.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Effective date—1987 c 259: See note following RCW 79.90.550.

Chapter 79.96

AQUATIC LANDS—OYSTERS, GEODUCKS, SHELLFISH, AND OTHER AQUACULTURAL USES

Sections

79.96.080	Geoduck harvesting—Agreements, regulation.
79.96.085	Geoduck harvesting—Designation of aquatic lands.
79.96.130	Wrongful taking of shellfish from public lands—Civil remedies.

79.96.080 Geoduck harvesting—Agreements, regulation. (1) Geoducks shall be sold as valuable materials under the provisions of chapter 79.90 RCW. After confirmation of the sale, the department of natural resources may enter into an agreement with the purchaser for the harvesting of geoducks. The department of natural resources may place terms and conditions in the harvesting agreements as the department deems necessary. The department of natural resources may enforce the provisions of any harvesting agreement by suspending or canceling the harvesting agreement or through any other means contained in the harvesting agreement. Any geoduck harvester may terminate a harvesting agreement entered into pursuant to this subsection if actions of a governmental agency, beyond the control of the harvester, its agents, or its employees, prohibit harvesting,

for a period exceeding thirty days during the term of the harvesting agreement, except as provided within the agreement. Upon such termination of the agreement by the harvester, the harvester shall be reimbursed by the department of natural resources for the cost paid to the department on the agreement, less the value of the harvest already accomplished by the harvester under the agreement.

(2) Harvesting agreements under this title for the purpose of harvesting geoducks shall require the harvester and the harvester's agent or representatives to comply with all applicable commercial diving safety standards and regulations promulgated and implemented by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as such law exists or as hereafter amended (84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq.); PROVIDED, That for the purposes of this section and RCW 75.24.100 as now or hereafter amended, all persons who dive for geoducks are deemed to be employees as defined by the federal occupational safety and health act. All harvesting agreements shall provide that failure to comply with these standards is cause for suspension or cancellation of the harvesting agreement: PROVIDED FURTHER, That for the purposes of this subsection if the harvester contracts with another person or entity for the harvesting of geoducks, the harvesting agreement shall not be suspended or canceled if the harvester terminates its business relationship with such entity until compliance with this subsection is secured. [1990 c 163 § 4; 1982 1st ex.s. c 21 § 141.]

79.96.085 Geoduck harvesting—Designation of aquatic lands. The department of natural resources shall designate the areas of aquatic lands owned by the state that are available for geoduck harvesting by licensed geoduck harvesters in accordance with chapter 79.90 RCW. [1990 c 163 § 5; 1983 1st ex.s. c 46 § 129; 1979 ex.s. c 141 § 5. Formerly RCW 75.28.286.]

Intent—Savings—Effective date—1983 1st ex.s. c 46: See RCW 75.98.005 through 75.98.007.

Commercial harvesting of geoducks: RCW 75.24.100, 75.28.287.

79.96.130 Wrongful taking of shellfish from public lands—Civil remedies. (1) If a person wrongfully takes shellfish or causes shellfish to be wrongfully taken from the public lands and the wrongful taking is intentional and knowing, then the person shall be liable for damages of treble the fair market retail value of the amount of shellfish wrongfully taken. If a person wrongfully takes shellfish from the public lands under other circumstances, then the person shall be liable for damages of double the fair market value of the amount of shellfish wrongfully taken.

(2) For purposes of this section, a person "wrongfully takes" shellfish from public lands if the person takes shellfish: (a) Above the limits of any applicable laws that govern the harvest of shellfish from public lands; (b) without reporting the harvest to the department of

fisheries or the department of natural resources where such reporting is required by law or contract; (c) outside the area or above the limits that an agreement or contract from the department of natural resources allows the harvest of shellfish from public lands; or (d) without a lease or purchase of the shellfish where such lease or purchase is required by law prior to harvest of the shellfish.

(3) The remedies in this section are for civil damages and shall be proved by a preponderance of the evidence. The department of natural resources may file a civil action in Thurston county superior court or the county where the shellfish were taken against any person liable under this section. Damages recovered under this section shall be applied in the same way as received under geoduck harvesting agreements authorized by RCW 79.96.080.

(4) For purposes of the remedies created by this section, the amount of shellfish wrongfully taken by a person may be established either:

(a) By surveying the aquatic lands to reasonably establish the amount of shellfish taken from the immediate area where a person is shown to have been wrongfully taking shellfish;

(b) By weighing the shellfish on board any vessel or in possession of a person shown to be wrongfully taking shellfish; or

(c) By any other evidence that reasonably establishes the amount of shellfish wrongfully taken.

The amount of shellfish established by (a) or (b) of this subsection shall be presumed to be the amount wrongfully taken unless the defendant shows by a preponderance of evidence that the shellfish were lawfully taken or that the defendant did not take the shellfish presumed to have been wrongfully taken. Whenever there is reason to believe that shellfish in the possession of any person were wrongfully taken, the department of natural resources or the department of fisheries may require the person to proceed to a designated off-load point and to weigh all shellfish in possession of the person or on board the person's vessel.

(5) This civil remedy is supplemental to the state's power to prosecute any person for theft of shellfish, for other crimes where shellfish are involved, or for violation of regulations of the department of fisheries. [1990 c 163 § 9.]

Title 80

PUBLIC UTILITIES

Chapters

80.01	Utilities and transportation commission.
80.04	Regulations—General.
80.24	Regulatory fees.
80.28	Gas, electrical, and water companies.
80.36	Telecommunications.
80.50	Energy facilities—Site locations.

Chapter 80.01
UTILITIES AND TRANSPORTATION
COMMISSION

Sections

80.01.060 Administrative law judges—Powers—Designated persons for emergency adjudications.

80.01.060 Administrative law judges—Powers—Designated persons for emergency adjudications. The commission shall have the power to request the appointment of administrative law judges under chapter 34.12 RCW when it deems such action necessary for its general administration. Such administrative law judges shall have power to administer oaths, to issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and testimony, to examine witnesses, and to receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under such rules as the commission may adopt. The commission may designate persons by rule to preside and enter final orders in emergency adjudications under RCW 34.05.479. [1991 c 48 § 1; 1981 c 67 § 35; 1961 c 14 § 80.01.060. Prior: 1925 ex.s. c 164 § 1; RRS § 10779-1. Formerly RCW 43.53.070.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

Chapter 80.04
REGULATIONS—GENERAL

Sections

80.04.010 Definitions.
80.04.015 Conduct of business subject to regulation—Determination by commission.
80.04.110 Complaints—Hearings—Water systems not meeting board of health standards—Drinking water standards—Nonmunicipal water systems audits.
80.04.130 Suspension of tariff changes—Mandatory measured telecommunications service—Washington telephone assistance program service.
80.04.250 Valuation of public service property.

80.04.010 Definitions. As used in this title, unless specifically defined otherwise or unless the context indicates otherwise:

"Commission" means the utilities and transportation commission.

"Commissioner" means one of the members of such commission.

"Competitive telecommunications company" means a telecommunications company which has been classified as such by the commission pursuant to RCW 80.36.320.

"Competitive telecommunications service" means a service which has been classified as such by the commission pursuant to RCW 80.36.330.

"Corporation" includes a corporation, company, association or joint stock association.

"Person" includes an individual, a firm or partnership.

"Gas plant" includes all real estate, fixtures and personal property, owned, leased, controlled, used or to be

used for or in connection with the transmission, distribution, sale or furnishing of natural gas, or the manufacture, transmission, distribution, sale or furnishing of other type gas, for light, heat or power.

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

"Electric plant" includes all real estate, fixtures and personal property operated, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat, or power for hire; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.

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

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

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

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

"Radio communications service company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees,

or receivers appointed by any court, and every city or town making available facilities to provide radio communications service, radio paging, or cellular communications service for hire, sale, or resale.

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

"Noncompetitive telecommunications service" means any service which has not been classified as competitive by the commission.

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

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

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

"Water company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, controlling, operating, or managing any water system for hire within this state: PROVIDED, That for purposes of commission jurisdiction it shall not include any water system serving less than one hundred customers where the average annual gross revenue per customer does not exceed three hundred dollars per year, which revenue figure may be increased annually by the commission by rule adopted pursuant to chapter 34.05 RCW to reflect the rate of inflation as determined by the implicit price deflator of the United States department of commerce: AND PROVIDED FURTHER, That such measurement of customers or revenues shall include all portions of water companies having common ownership or control, regardless of location or corporate designation. "Control" as used herein shall be defined by the commission by rule and shall not include management by a satellite agency as defined in chapter 70.116 RCW if the satellite agency is not an owner of the water company. "Water company" also includes, for auditing purposes only, nonmunicipal water systems which are referred to

the commission pursuant to an administrative order from the department, or the city or county as provided in RCW 80.04.110. However, water companies exempt from commission regulation shall be subject to the provisions of chapter 19.86 RCW. A water company cannot be removed from regulation except with the approval of the commission. Water companies subject to regulation may petition the commission for removal from regulation if the number of customers falls below one hundred or the average annual revenue per customer falls below three hundred dollars. The commission is authorized to maintain continued regulation if it finds that the public interest so requires.

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

"Public service company" includes every gas company, electrical company, telecommunications company, and water company. Ownership or operation of a cogeneration facility does not, by itself, make a company or person a public service company.

"Local exchange company" means a telecommunications company providing local exchange telecommunications service.

"Department" means the department of health.

The term "service" is used in this title in its broadest and most inclusive sense. [1991 c 100 § 1; 1989 c 101 § 2; 1987 c 229 § 1. Prior: 1985 c 450 § 2; 1985 c 167 § 1; 1985 c 161 § 1; 1979 ex.s. c 191 § 10; 1977 ex.s. c 47 § 1; 1963 c 59 § 1; 1961 c 14 § 80.04.010; prior: 1955 c 316 § 2; prior: 1929 c 223 § 1, part; 1923 c 116 § 1, part; 1911 c 117 § 8, part; RRS § 10344, part.]

Severability—Legislative review—1985 c 450: See RCW 80.36.900 and 80.36.901.

Severability—1979 ex.s. c 191: See RCW 82.35.900.

80.04.015 Conduct of business subject to regulation—Determination by commission. Whether or not any person or corporation is conducting business subject to regulation under this title, or has performed or is performing any act requiring registration or approval of the commission without securing such registration or approval, shall be a question of fact to be determined by the commission. Whenever the commission believes that any person or corporation is engaged in any activity without first complying with the requirements of this title, it may institute a special proceeding requiring such person or corporation to appear before the commission at a location convenient for witnesses and the production of evidence and produce information, books, records, accounts, and other memoranda, and give testimony under oath as to the activities being conducted. The commission may consider any and all facts that may indicate the true nature and extent of the operations or acts and may subpoena such witnesses and documents as it deems necessary.

After investigation, the commission is authorized and directed to issue the necessary order or orders declaring

the activities to be subject to, or not subject to, the provisions of this title. In the event the activities are found to be subject to the provisions of this title, the commission shall issue such orders as may be necessary to require all parties involved in the activities to comply with this title, and with respect to services found to be reasonably available from alternative sources, to issue orders to cease and desist from providing jurisdictional services pending full compliance.

In proceedings under this section, no person or corporation may be excused from testifying or from producing any information, book, document, paper, or account before the commission when ordered to do so, on the ground that the testimony or evidence, information, book, document, or account required may tend to incriminate him or her or subject him or her to penalty or forfeiture specified in this title; but no person or corporation may be prosecuted, punished, or subjected to any penalty or forfeiture specified in this title for or on account of any account, transaction, matter, or thing concerning which he or she shall under oath have testified or produced documentary evidence in proceedings under this section: PROVIDED, That no person so testifying may be exempt from prosecution or punishment for any perjury committed by him or her in such testimony: PROVIDED FURTHER, That the exemption from prosecution in this section extends only to violations of this title.

Until July 1, 1994, in any proceeding instituted under this section to determine whether a person or corporation owning, controlling, operating, or managing a water system is subject to commission regulation, and where the person or corporation has failed or refused to provide sufficient information or documentation to enable the commission to make such a determination, the burden shall be on such person or corporation to prove that the person's or corporation's operations or acts are not subject to commission regulation. [1991 c 101 § 1; 1986 c 11 § 1.]

80.04.110 Complaints—Hearings—Water systems not meeting board of health standards—Drinking water standards—Nonmunicipal water systems audits.

(1) Complaint may be made by the commission of its own motion or by any person or corporation, chamber of commerce, board of trade, or any commercial, mercantile, agricultural or manufacturing society, or any body politic or municipal corporation, or by the public counsel section of the office of the attorney general, or its successor, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission: PROVIDED, That no complaint shall be entertained by the commission except upon its own motion, as to the reasonableness of the schedule of the rates or charges of any gas company, electrical company, water company, or telecommunications company, unless the same be signed by the mayor, council or commission of the city or town in which the company complained of is engaged in business, or not less than

twenty-five consumers or purchasers of such gas, electricity, water or telecommunications service, or at least twenty-five percent of the consumers or purchasers of the company's service: PROVIDED, FURTHER, That when two or more public service corporations, (meaning to exclude municipal and other public corporations) are engaged in competition in any locality or localities in the state, either may make complaint against the other or others that the rates, charges, rules, regulations or practices of such other or others with or in respect to which the complainant is in competition, are unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly, and upon such complaint or upon complaint of the commission upon its own motion, the commission shall have power, after notice and hearing as in other cases, to, by its order, subject to appeal as in other cases, correct the abuse complained of by establishing such uniform rates, charges, rules, regulations or practices in lieu of those complained of, to be observed by all of such competing public service corporations in the locality or localities specified as shall be found reasonable, remunerative, nondiscriminatory, legal, and fair or tending to prevent oppression or monopoly or to encourage competition, and upon any such hearing it shall be proper for the commission to take into consideration the rates, charges, rules, regulations and practices of the public service corporation or corporations complained of in any other locality or localities in the state.

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

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

(4) The commission shall, as appropriate, audit a nonmunicipal water system upon receipt of an administrative order from the department, or the city or county in which the water system is located, finding that the

water delivered by a system does not meet state board of health standards adopted under RCW 43.20.050(2)(a) or standards adopted under chapter 70.116 RCW and the results of the audit shall be provided to the requesting department, city, or county. However, the number of nonmunicipal water systems referred to the commission in any one calendar year shall not exceed twenty percent of the water companies subject to commission regulation as defined in RCW 80.04.010.

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

(5) Any customer or purchaser of service from a water system or company that is subject to commission regulation may file a complaint with the commission if he or she has reason to believe that the water delivered by the system to the customer does not meet state drinking water standards under chapter 43.20 or 70.116 RCW. The commission shall investigate such a complaint, and shall request that the state department of health or local health department of the county in which the system is located test the water for compliance with state drinking water standards, and provide the results of such testing to the commission. The commission may decide not to investigate the complaint if it determines that the complaint has been filed in bad faith, or for the purpose of harassment of the water system or company, or for other reasons has no substantial merit. The water system or company shall bear the expense for the testing. After the commission has received the complaint from the customer and during the pendency of the commission investigation, the water system or company shall not take any steps to terminate service to the customer or to collect any amounts alleged to be owed to the company by the customer. The commission may issue an order or take any other action to ensure that no such steps are taken by the system or company. The customer may, at the customer's option and expense, obtain a water quality test by a licensed or otherwise qualified water testing laboratory, of the water delivered to the customer by the water system or company, and provide the results of such a test to the commission. If the commission determines that the water does not meet state drinking water standards, it shall exercise its authority over the system or company as provided in this title, and may, where appropriate, order a refund to the customer on a pro rata basis for the standard water delivered to the customer, and shall order reimbursement to the customer for the cost incurred by the customer, if any, in obtaining a water quality test. [1991 c 134 § 1; 1991 c 100 § 2. Prior: 1989 c 207 § 2; 1989 c 101 § 17; 1985 c 450 § 11; 1961 c 14 § 80.04.110; prior: 1913 c 145 § 1; 1911 c 117 § 80; RRS § 10422.]

Reviser's note: This section was amended by 1991 c 100 § 2 and by 1991 c 134 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Legislative review—1985 c 450: See RCW 80.36.900 and 80.36.901.

Drinking water standards: Chapters 43.21A, 70.119A, and 80.28 RCW.

80.04.130 Suspension of tariff changes—Mandatory measured telecommunications service—Washington telephone assistance program service. (1) Whenever any public service company shall file with the commission any schedule, classification, rule or regulation, the effect of which is to change any rate, charge, rental or toll theretofore charged, the commission shall have power, either upon its own motion or upon complaint, upon notice, to enter upon a hearing concerning such proposed change and the reasonableness and justness thereof, and pending such hearing and the decision thereon the commission may suspend the operation of such rate, charge, rental or toll for a period not exceeding ten months from the time the same would otherwise go into effect, and after a full hearing the commission may make such order in reference thereto as would be provided in a hearing initiated after the same had become effective. The commission shall not suspend a tariff that makes a decrease in a rate, charge, rental, or toll filed by a telecommunications company pending investigation of the fairness, justness, and reasonableness of the decrease when the filing does not contain any offsetting increase to another rate, charge, rental, or toll and the filing company agrees to not file for an increase to any rate, charge, rental, or toll to recover the revenue deficit that results from the decrease for a period of one year. The filing company shall file with any decrease sufficient information as the commission by rule may require to demonstrate the decreased rate, charge, rental, or toll is above the long run incremental cost of the service. A tariff decrease that results in a rate that is below long run incremental cost, or is contrary to commission rule or order, or the requirements of this chapter, shall be rejected for filing and returned to the company. The commission may prescribe a different rate to be effective on the prospective date stated in its final order after its investigation, if it concludes based on the record that the originally filed and effective rate is unjust, unfair, or unreasonable.

The commission may suspend the initial tariff filing of any water company removed from and later subject to commission jurisdiction because of the number of customers or the average annual gross revenue per customer provisions of RCW 80.04.010. The commission may allow temporary rates during the suspension period. These rates shall not exceed the rates charged when the company was last regulated. Upon a showing of good cause by the company, the commission may establish a different level of temporary rates.

(2) At any hearing involving any change in any schedule, classification, rule or regulation the effect of which is to increase any rate, charge, rental or toll theretofore charged, the burden of proof to show that such increase is just and reasonable shall be upon the public service company.

(3) The implementation of mandatory local measured telecommunications service is a major policy change in available telecommunications service. The commission

shall not accept for filing or approve, prior to June 1, 1993, a tariff filed by a telecommunications company which imposes mandatory local measured service on any customer or class of customers, except that, upon finding that it is in the public interest, the commission may accept for filing and approve a tariff that imposes mandatory measured service for a telecommunications company's extended area service or foreign exchange service. This subsection does not apply to land, air, or marine mobile service, or to pay telephone service, or to any service which has been traditionally offered on a measured service basis.

(4) The implementation of Washington telephone assistance program service is a major policy change in available telecommunications service. The implementation of Washington telephone assistance program service will aid in achieving the stated goal of universal telephone service. [1990 c 170 § 1; 1989 c 101 § 13. Prior: 1987 c 333 § 1; 1987 c 229 § 2; prior: 1985 c 450 § 12; 1985 c 206 § 1; 1985 c 161 § 2; 1984 c 3 § 2; 1961 c 14 § 80.04.130; prior: 1941 c 162 § 1; 1937 c 169 § 2; 1933 c 165 § 3; 1915 c 133 § 1; 1911 c 117 § 82; Rem. Supp. 1941 § 10424.]

Effective date—1987 c 333: "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 June 1, 1987." [1987 c 333 § 2.]

Severability—**Legislative review**—1985 c 450: See RCW 80.36.900 and 80.36.901.

80.04.250 Valuation of public service property. The commission shall have power upon complaint or upon its own motion to ascertain and determine the fair value for rate making purposes of the property of any public service company used and useful for service in this state and shall exercise such power whenever it shall deem such valuation or determination necessary or proper under any of the provisions of this title. In determining what property is used and useful for providing electric, gas, or water service, the commission may include the reasonable costs of construction work in progress to the extent that the commission finds that inclusion is in the public interest.

The commission shall have the power to make revaluations of the property of any public service company from time to time.

The commission shall, before any hearing is had, notify the complainants and the public service company concerned of the time and place of such hearing by giving at least thirty days' written notice thereof, specifying that at the time and place designated a hearing will be held for the purpose of ascertaining the value of the company's property, used and useful as aforesaid, which notice shall be sufficient to authorize the commission to inquire into and pass upon the matters designated in this section. [1991 c 122 § 2; 1961 c 14 § 80.04.250. Prior: 1933 c 165 § 4; 1913 c 182 § 1; 1911 c 117 § 92; RRS § 10441.]

Findings—1991 c 122: "The legislature finds that the state is facing an energy shortage as growth occurs and that inadequate supplies of energy will cause harmful impacts on the entire range of state citizens. The legislature further finds that energy efficiency improvement

is the single most effective near term measure to lessen the risk of energy shortage. In the area of electricity, the legislature additionally finds that the Northwest power planning council has made several recommendations, including an update of the commercial building energy code and granting flexible ratemaking alternatives for utility commissions to encourage prudent acquisition of new electric resources." [1991 c 122 § 1.]

Severability—1991 c 122: "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." [1991 c 122 § 4.]

Chapter 80.24 REGULATORY FEES

Sections

80.24.010 Companies to file reports of gross revenue and pay fees.

80.24.010 Companies to file reports of gross revenue and pay fees. Every public service company subject to regulation by the commission shall, on or before the date specified by the commission for filing annual reports under RCW 80.04.080, file with the commission a statement on oath showing its gross operating revenue from intrastate operations for the preceding calendar year or portion thereof and pay to the commission a fee equal to one-tenth of one percent of the first fifty thousand dollars of gross operating revenue, plus two-tenths of one percent of any gross operating revenue in excess of fifty thousand dollars: **PROVIDED**, That the fee shall in no case be less than one dollar.

The percentage rates of gross operating revenue to be paid in any year may be decreased by the commission for any class of companies subject to the payment of such fees, by general order entered before March 1st of such year, and for such purpose such companies shall be classified as follows:

Electrical, gas, water, telecommunications, and irrigation companies shall constitute class one. Every other company subject to regulation by the commission, for which regulatory fees are not otherwise fixed by law shall pay fees as herein provided and shall constitute additional classes according to kinds of businesses engaged in. [1990 c 48 § 1; 1985 c 450 § 14; 1961 c 14 § 80.24.010. Prior: 1955 c 125 § 2; prior: 1939 c 123 § 1, part; 1937 c 158 § 1, part; 1929 c 107 § 1, part; 1923 c 107 § 1, part; 1921 c 113 § 1, part; RRS § 10417, part.]

Severability—**Legislative review**—1985 c 450: See RCW 80.36.900 and 80.36.901.

Chapter 80.28 GAS, ELECTRICAL, AND WATER COMPANIES

Sections

80.28.010 Duties as to rates, services, and facilities—Limitations on termination of utility service for residential heating.

80.28.011 Expired.

80.28.022 Water company rates—Reserve account.

80.28.025 Encouragement of energy cogeneration, conservation, and production from renewable resources—Consideration of water conservation goals.

80.28.110 Service to be furnished on reasonable notice.

- 80.28.260 Adoption of policies to provide financial incentives for energy efficiency programs.
- 80.28.270 Water companies—Extension, installation, or connection charges.
- 80.28.280 Compressed natural gas—Motor vehicle refueling stations—Public interest.
- 80.28.290 Compressed natural gas—Refueling stations—Identify barriers.

80.28.010 Duties as to rates, services, and facilities—Limitations on termination of utility service for residential heating. (1) All charges made, demanded or received by any gas company, electrical company or water company for gas, electricity or water, or for any service rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient.

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

(3) All rules and regulations issued by any gas company, electrical company or water company, affecting or pertaining to the sale or distribution of its product, shall be just and reasonable.

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

(a) Notifies the utility of the inability to pay the bill, including a security deposit. This notice should be provided within five business days of receiving a payment overdue notice unless there are extenuating circumstances. If the customer fails to notify the utility within five business days and service is terminated, the customer can, by paying reconnection charges, if any, and fulfilling the requirements of this section, receive the protections of this chapter;

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

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

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

(e) Agrees to a payment plan and agrees to maintain the payment plan. The plan will be designed both to pay the past due bill by the following October 15 and to pay for continued utility service. If the past due bill is not paid by the following October 15, the customer shall not be eligible for protections under this chapter until the past due bill is paid. The plan shall not require monthly payments in excess of seven percent of the customer's monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter

during November 15 through March 15. A customer may agree to pay a higher percentage during this period, but shall not be in default unless payment during this period is less than seven percent of monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter. If assistance payments are received by the customer subsequent to implementation of the plan, the customer shall contact the utility to reformulate the plan; and

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

(5) The utility shall:

(a) Include in any notice that an account is delinquent and that service may be subject to termination, a description of the customer's duties in this section;

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

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

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

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

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

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

(8) Every gas company, electrical company and water company shall construct and maintain such facilities in connection with the manufacture and distribution of its product as will be efficient and safe to its employees and the public.

(9) An agreement between the customer and the utility, whether oral or written, shall not waive the protections afforded under this chapter.

(10) In establishing rates or charges for water service, water companies as defined in RCW 80.04.010 may consider the achievement of water conservation goals

and the discouragement of wasteful water use practices. [1991 c 347 § 22; 1991 c 165 § 4; 1990 1st ex.s. c 1 § 5; 1986 c 245 § 5; 1985 c 6 § 25; 1984 c 251 § 4; 1961 c 14 § 80.28.010. Prior: 1911 c 117 § 26; RRS § 10362.]

Reviser's note: This section was amended by 1991 c 165 § 4 and by 1991 c 347 § 22, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purposes—1991 c 347: See note following RCW 90.42.005.

Severability—1991 c 347: See RCW 90.42.900.

Findings—1991 c 165: See note following RCW 35.21.300.

80.28.011 Expired. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

80.28.022 Water company rates—Reserve account. In determining the rates to be charged by each water company subject to its jurisdiction, the commission may provide for the funding of a reserve account exclusively for the purpose of making capital improvements approved by the department of health as a part of a long-range plan, or required by the department to assure compliance with federal or state drinking water regulations, or to perform construction or maintenance required by the department of ecology to secure safety to life and property under RCW 43.21A.064(2). Expenditures from the fund shall be subject to prior approval by the commission, and shall be treated for rate-making purposes as customer contributions. [1991 c 150 § 1; 1990 c 132 § 6.]

Legislative findings—Severability—1990 c 132: See note following RCW 43.20.240.

80.28.025 Encouragement of energy cogeneration, conservation, and production from renewable resources—Consideration of water conservation goals. (1) In establishing rates for each gas and electric company regulated by this chapter, the commission shall adopt policies to encourage meeting or reducing energy demand through cogeneration as defined in RCW 82.35.020, measures which improve the efficiency of energy end use, and new projects which produce or generate energy from renewable resources, such as solar energy, wind energy, hydroelectric energy, geothermal energy, wood, wood waste, municipal wastes, agricultural products and wastes, and end-use waste heat. These policies shall include but are not limited to allowing a return on investment in measures to improve the efficiency of energy end use, cogeneration, or projects which produce or generate energy from renewable resources which return is established by adding an increment of two percent to the rate of return on common equity permitted on the company's other investment. Measures or projects encouraged under this section are those for which construction or installation is begun after June 12, 1980, and before January 1, 1990, and which, at the time they are placed in the rate base, are reasonably expected to save, produce, or generate energy at a total incremental system cost per unit of energy delivered to end use which is less than or equal to the

incremental system cost per unit of energy delivered to end use from similarly available conventional energy resources which utilize nuclear energy or fossil fuels and which the gas or electric company could acquire to meet energy demand in the same time period. The rate of return increment shall be allowed for a period not to exceed thirty years after the measure or project is first placed in the rate base.

(2) In establishing rates for water companies regulated by this chapter, the commission may consider the achievement of water conservation goals and the discouragement of wasteful water use practices. [1991 c 347 § 23; 1980 c 149 § 2.]

Purposes—1991 c 347: See note following RCW 90.42.005.

Severability—1991 c 347: See RCW 90.42.900.

Public utility tax exemptions relating to energy conservation and production from renewable resources: RCW 82.16.055.

80.28.110 Service to be furnished on reasonable notice. Every gas company, electrical company or water company, engaged in the sale and distribution of gas, electricity or water, shall, upon reasonable notice, furnish to all persons and corporations who may apply therefor and be reasonably entitled thereto, suitable facilities for furnishing and furnish all available gas, electricity and water as demanded, except that a water company shall not furnish water contrary to the provisions of water system plans approved under chapter 43.20 or 70.116 RCW. [1990 c 132 § 5; 1961 c 14 § 80.28.110. Prior: 1911 c 117 § 33; RRS § 10369.]

Legislative findings—Severability—1990 c 132: See note following RCW 43.20.240.

Duty of company to fix rate for wholesale power on request of public utility district: RCW 54.04.100.

80.28.260 Adoption of policies to provide financial incentives for energy efficiency programs. (1) The commission shall adopt a policy allowing an incentive rate of return on investment (a) for payments made under RCW 19.27A.035 and (b) for programs that improve the efficiency of energy end use if priority is given to senior citizens and low-income citizens in the course of carrying out such programs. The incentive rate of return on investments set forth in this subsection is established by adding an increment of two percent to the rate of return on common equity permitted on the company's other investments.

(2) The commission shall consider and may adopt a policy allowing an incentive rate of return on investment in additional programs to improve the efficiency of energy end use or other incentive policies to encourage utility investment in such programs.

(3) The commission shall consider and may adopt other policies to protect a company from a reduction of short-term earnings that may be a direct result of utility programs to increase the efficiency of energy use. These policies may include allowing a periodic rate adjustment for investments in end use efficiency or allowing changes in price structure designed to produce additional new revenue.

(4) The commission may adopt a policy allowing the recovery of a utility's expenses incurred under RCW 19.27A.055. [1990 c 2 § 9.]

Effective dates—1990 c 2: See note following RCW 19.27.040.

Findings—**Severability**—1990 c 2: See notes following RCW 19.27A.015.

80.28.270 Water companies—Extension, installation, or connection charges. The commission's jurisdiction over the rates, charges, practices, acts or services of any water company shall include any aspect of line extension, service installation, or service connection. If the charges for such services are not set forth by specific amount in the company's tariff filed with the commission pursuant to RCW 80.28.050, the commission shall determine the fair, just, reasonable, and sufficient charge for such extension, installation, or connection. In any such proceeding in which there is no specified tariffed rate, the burden shall be on the company to prove that its proposed charges are fair, just, reasonable, and sufficient. [1991 c 101 § 2.]

80.28.280 Compressed natural gas—Motor vehicle refueling stations—Public interest. The legislature finds that compressed natural gas offers significant potential to reduce vehicle emissions and to significantly decrease dependence on petroleum-based fuels. The legislature also finds that well-developed and convenient refueling systems are imperative if compressed natural gas is to be widely used by the public. The legislature declares that the development of compressed natural gas refueling stations are in the public interest. Nothing in this section and RCW 80.28.290 is intended to alter the regulatory practices of the commission or allow the subsidization of one ratepayer class by another. [1991 c 199 § 216.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—**Severability**—**Captions not law**—1991 c 199: See RCW 70.94.904 through 70.94.906.

Clean fuel: RCW 70.120.210.

80.28.290 Compressed natural gas—Refueling stations—Identify barriers. The commission shall identify barriers to the development of refueling stations for vehicles operating on compressed natural gas, and shall develop policies to remove such barriers. In developing such policies, the commission shall consider providing rate incentives to encourage natural gas companies to invest in the infrastructure required by such refueling stations. [1991 c 199 § 217.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—**Severability**—**Captions not law**—1991 c 199: See RCW 70.94.904 through 70.94.906.

Chapter 80.36

TELECOMMUNICATIONS

(Formerly: Telephone and telegraph companies)

Sections

80.36.350 Registration of new companies.

- 80.36.370 Certain services not regulated.
- 80.36.410 Lifeline service—Legislative finding. (Effective until June 30, 1993.)
- 80.36.420 Washington telephone assistance program—Availability, components. (Effective until June 30, 1993.)
- 80.36.430 Washington telephone assistance program—Excise tax. (Effective until June 30, 1993.)
- 80.36.440 Washington telephone assistance program—Rules. (Effective until June 30, 1993.)
- 80.36.450 Lifeline service—Limitation. (Effective until June 30, 1993.)
- 80.36.460 Washington telephone assistance program—Deposit waivers, connection fee discounts. (Effective until June 30, 1993.)
- 80.36.470 Washington telephone assistance program—Eligibility. (Effective until June 30, 1993.)
- 80.36.475 Washington telephone assistance program—Report to legislature.
- 80.36.480 Repealed.
- 80.36.500 Information delivery services through exclusive number prefix or service access code.
- 80.36.522 Alternate operator service companies—Registration—Penalties.
- 80.36.524 Alternate operator service companies—Rules.
- 80.36.530 Violation of consumer protection act—Damages.
- 80.36.540 Telefacsimile messages—Unsolicited transmission—Penalties.
- 80.36.550 Enhanced state-wide 911 service—Advisory committee. (Effective unless Referendum Bill No. 42 is approved by the electorate at the November 1991 general election.)
- 80.36.550 Repealed. (Effective December 5, 1991, if Referendum Bill No. 42 is approved by the electorate at the November 1991 general election.)
- 80.36.5501 Enhanced state-wide 911 service—Study. (Effective unless Referendum Bill No. 42 is approved by the electorate at the November 1991 general election.)
- 80.36.5501 Repealed. (Effective December 5, 1991, if Referendum Bill No. 42 is approved by the electorate at the November 1991 general election.)

80.36.350 Registration of new companies. Each telecommunications company not operating under tariff in Washington on January 1, 1985, shall register with the commission before beginning operations in this state. The registration shall be on a form prescribed by the commission and shall contain such information as the commission may by rule require, but shall include as a minimum the name and address of the company; the name and address of its registered agent, if any; the name, address, and title of each officer or director; its most current balance sheet; its latest annual report, if any; and a description of the telecommunications services it offers or intends to offer.

The commission may require as a precondition to registration the procurement of a performance bond sufficient to cover any advances or deposits the telecommunications company may collect from its customers, or order that such advances or deposits be held in escrow or trust.

The commission may deny registration to any telecommunications company which:

- (1) Does not provide the information required by this section;
- (2) Fails to provide a performance bond, if required;
- (3) Does not possess adequate financial resources to provide the proposed service; or
- (4) Does not possess adequate technical competency to provide the proposed service.

The commission shall take action to approve or issue a notice of hearing concerning any application for registration within thirty days after receiving the application. The commission may approve an application with or without a hearing. The commission may deny an application after a hearing.

A telecommunications company may also submit a petition for competitive classification under RCW 80.36.310 at the time it applies for registration. The commission may act on the registration application and the competitive classification petition at the same time. [1990 c 10 § 1; 1985 c 450 § 7.]

80.36.370 Certain services not regulated. The commission shall not regulate the following:

- (1) One way broadcast or cable television transmission of television or radio signals;
- (2) Private telecommunications systems;
- (3) Telegraph services;
- (4) Any sale, lease, or use of customer premises equipment except such equipment as is regulated on July 28, 1985;
- (5) Private shared telecommunications services, unless the commission finds, upon notice and investigation, that customers of such services have no alternative access to local exchange telecommunications companies. If the commission makes such a finding, it may require the private shared telecommunications services provider to make alternative facilities or conduit space available on reasonable terms and conditions at reasonable prices;
- (6) Radio communications services provided by a regulated telecommunications company, except that when those services are the only voice grade, local exchange telecommunications service available to a customer of the company the commission may regulate the radio communication service of that company. [1990 c 118 § 1; 1985 c 450 § 9.]

80.36.410 *Lifeline service—Legislative finding. (Effective until June 30, 1993.)

**Reviser's note:* References to "lifeline service" were changed to "Washington telephone assistance program" by 1990 c 170.

Expiration date—1990 c 170; 1987 c 229 §§ 3–10: "RCW 80.36.410 through 80.36.470 shall expire June 30, 1993, unless extended by the legislature." [1990 c 170 § 8; 1987 c 229 § 12.]

80.36.420 Washington telephone assistance program—Availability, components. (Effective until June 30, 1993.) The Washington telephone assistance program shall be available to participants of department programs set forth in RCW 80.36.470. Assistance shall consist of the following components:

- (1) A discount on service connection fees of fifty percent or more as set forth in RCW 80.36.460.
- (2) A waiver of deposit requirements on local exchange service, as set forth in RCW 80.36.460.
- (3) A discounted flat rate service for local exchange service, which shall be subject to the following conditions:

(a) The commission shall establish a single telephone assistance rate for all local exchange companies operating in the state of Washington. The telephone assistance

rate shall include any federal end user access charges and any other charges necessary to obtain local exchange service.

(b) The commission shall, in establishing the telephone assistance rate, consider all charges for local exchange service, including federal end user access charges, mileage charges, extended area service, and any other charges necessary to obtain local exchange service.

(c) The telephone assistance rate shall only be available to eligible customers subscribing to the lowest available local exchange flat rate service, where the lowest local exchange flat rate, including any federal end user access charges and any other charges necessary to obtain local exchange service, is greater than the telephone assistance rate. Low-income senior citizens sixty years of age and older and other low-income persons identified by the department as medically needy shall, where single-party service is available, be provided with single-party service as the lowest available local exchange flat rate service.

(d) The cost of providing the service shall be paid, to the maximum extent possible, by a waiver of all or part of the federal end user access charge and, to the extent necessary, from the telephone assistance fund created by RCW 80.36.430. [1990 c 170 § 2; 1987 c 229 § 4.]

Expiration date—1990 c 170; 1987 c 229 §§ 3–10: See note following RCW 80.36.410.

80.36.430 Washington telephone assistance program—Excise tax. (Effective until June 30, 1993.)

The Washington telephone assistance program shall be funded by a telephone assistance excise tax on all switched access lines and by funds from any federal government or other programs for this purpose. Switched access lines are defined in *RCW 82.14B.020. The telephone assistance excise tax shall be applied equally to all residential and business access lines not to exceed fourteen cents per month. The telephone assistance excise tax shall be separately identified on each ratepayer's bill as the "Washington telephone assistance program." All money collected from the telephone assistance excise tax shall be transferred to a telephone assistance fund administered by the department. Local exchange companies shall bill the fund for their expenses incurred in offering the telephone assistance program, including administrative and program expenses. The department shall disburse the money to the local exchange companies. The department is exempted from having to conclude a contract with local exchange companies in order to effect this reimbursement. The department shall recover its administrative costs from the fund. The department may specify by rule the range and extent of administrative and program expenses that will be reimbursed to local exchange companies. [1990 c 170 § 3; 1987 c 229 § 5.]

**Reviser's note:* "Telephone access line" is defined in RCW 82.14B.020. "Switched access lines" is not defined in RCW 82.14B.020.

Expiration date—1990 c 170; 1987 c 229 §§ 3–10: See note following RCW 80.36.410.

80.36.440 Washington telephone assistance program—Rules. (Effective until June 30, 1993.) The commission and the department may adopt any rules necessary to implement RCW 80.36.410 through 80.36.470. [1990 c 170 § 4; 1987 c 229 § 6.]

Expiration date—1990 c 170; 1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.450 *Lifeline service—Limitation. (Effective until June 30, 1993.)

***Reviser's note:** References to "lifeline service" were changed to "Washington telephone assistance program" by 1990 c 170.

Expiration date—1990 c 170; 1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.460 Washington telephone assistance program—Deposit waivers, connection fee discounts. (Effective until June 30, 1993.) Local exchange companies shall file tariffs with the commission which waive deposits on local exchange service for eligible subscribers and which establish a fifty percent discount on service connection fees for eligible subscribers. Part or all of the remaining fifty percent of service connection fees may be paid by funds from federal government or other programs for this purpose. The commission or other appropriate agency shall make timely application for any available federal funds. The remaining portion of the connection fee to be paid by the subscriber shall be expressly payable by installment fees spread over a period of months. A subscriber may, however, choose to pay the connection fee in a lump sum. Costs associated with the waiver and discount shall be accounted for separately and recovered from the telephone assistance fund. Eligible subscribers shall be allowed one waiver of a deposit and one discount on service connection fees per year. [1990 c 170 § 5; 1987 c 229 § 8.]

Expiration date—1990 c 170; 1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.470 Washington telephone assistance program—Eligibility. (Effective until June 30, 1993.) Adult recipients of department-administered programs for the financially needy which provide continuing financial or medical assistance, food stamps, or supportive services to persons in their own homes are eligible for participation in the telephone assistance program. The department shall notify the participants of their eligibility. [1990 c 170 § 6; 1987 c 229 § 9.]

Expiration date—1990 c 170; 1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.475 Washington telephone assistance program—Report to legislature. The department shall report to the energy and utilities committees of the house of representatives and the senate by December 1 of each year on the status of the Washington telephone assistance program. The report shall include the number of participants by qualifying social service programs receiving benefits from the telephone assistance program and the type of benefits participants receive. The report

shall also include a description of the geographical distribution of participants, the program's annual revenue and expenditures, and any recommendations for legislative action. [1990 c 170 § 7.]

80.36.480 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

80.36.500 Information delivery services through exclusive number prefix or service access code. (1) As used in this section:

(a) "Information delivery services" means telephone recorded messages, interactive programs, or other information services that are provided for a charge to a caller through an exclusive telephone number prefix or service access code.

(b) "Information providers" means the persons or corporations that provide the information, prerecorded message, or interactive program for the information delivery service. The information provider generally receives a portion of the revenue from the calls.

(c) "Interactive program" means a program that allows an information delivery service caller, once connected to the information provider's announcement machine, to use the caller's telephone device to access more specific information.

(2) The utilities and transportation commission shall by rule require any local exchange company that offers information delivery services to a local telephone exchange to provide each residential telephone subscriber the opportunity to block access to all information delivery services offered through the local exchange company. The rule shall take effect by October 1, 1988.

(3) All costs of complying with this section shall be borne by the information providers.

(4) The local exchange company shall inform subscribers of the availability of the blocking service through a bill insert and by publication in a local telephone directory. [1991 c 191 § 8; 1988 c 123 § 2.]

Legislative finding, intent—1988 c 123: "(1) The legislature finds that throughout the state there is widespread use of information delivery services, which are also known as information-access telephone services and commonly provided on a designated telephone number prefix. These services operate on a charge-per-call basis, providing revenue for both the information provider and the local exchange company. The marketing practices for these telephone services have at times been misleading to consumers and at other times specifically directed toward minors. The result has been placement of calls by individuals, particularly by children, who are uninformed about the charges that might apply. In addition, children may have secured access to obscene, indecent, and salacious material through these services. The legislature finds that these services can be blocked by certain local exchange companies at switching locations, and that devices exist which allow for blocking within a residence. Therefore, the legislature finds that residential telephone users in the state are entitled to the option of having their phones blocked from access to information delivery services.

(2) It is the intent of the legislature that the utilities and transportation commission and local exchange companies, to the extent feasible, distinguish between information delivery services that are misleading to consumers, directed at minors, or otherwise objectionable and adopt policies and rules that accomplish the purposes of RCW 80.36.500 with the least adverse effect on information delivery services that are not misleading to consumers, directed at minors, or otherwise objectionable." [1988 c 123 § 1.]

Investigation and report by commission: "By October 1, 1988, the commission shall investigate and report to the committees on energy and utilities in the house of representatives and the senate on methods to protect minors from obscene, indecent, and salacious materials available through the use of information delivery services. The investigation shall include a study of personal identification numbers, credit cards, scramblers, and beep-tone devices as methods of limiting access." [1988 c 123 § 3.]

Severability—1988 c 123: "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." [1988 c 123 § 4.]

Information delivery services: Chapter 19.162 RCW.

80.36.522 Alternate operator service companies—Registration—Penalties. All alternate operator service companies providing services within the state shall register with the commission as a telecommunications company before providing alternate operator services. The commission may deny an application for registration of an alternate operator services company if, after a hearing, it finds that the services and charges to be offered by the company are not for the public convenience and advantage. The commission may suspend the registration of an alternate operator services company if, after a hearing, it finds that the company does not meet the service or disclosure requirements of the commission. Any alternate operator services company that provides service without being properly registered with the commission shall be subject to a penalty of not less than five hundred dollars and not more than one thousand dollars for each and every offense. In case of a continuing offense, every day's continuance shall be a separate offense. The penalty shall be recovered in an action as provided in RCW 80.04.400. [1990 c 247 § 2.]

80.36.524 Alternate operator service companies—Rules. The commission may adopt rules that provide for minimum service levels for telecommunications companies providing alternate operator services. The rules may provide a means for suspending the registration of a company providing alternate operator services if the company fails to meet minimum service levels or if the company fails to provide appropriate disclosure to consumers of the protection afforded under this chapter. [1990 c 247 § 3.]

80.36.530 Violation of consumer protection act—Damages. In addition to the penalties provided in this title, a violation of RCW 80.36.510, 80.36.520, or 80.36.524 constitutes an unfair or deceptive act in trade or commerce in violation of chapter 19.86 RCW, the consumer protection act. Acts in violation of RCW 80.36.510, 80.36.520, or 80.36.524 are not reasonable in relation to the development and preservation of business, and constitute matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. It shall be presumed that damages to the consumer are equal to the cost of the service provided plus two hundred dollars. Additional damages must be proved. [1990 c 247 § 4; 1988 c 91 § 3.]

80.36.540 Telefacsimile messages—Unsolicited transmission—Penalties. (1) As used in this section, "telefacsimile message" means the transmittal of electronic signals over telephone lines for conversion into written text.

(2) No person, corporation, partnership, or association shall initiate the unsolicited transmission of telefacsimile messages promoting goods or services for purchase by the recipient.

(3)(a) Except as provided in (b) of this subsection, this section shall not apply to telefacsimile messages sent to a recipient with whom the initiator has had a prior contractual or business relationship.

(b) A person shall not initiate an unsolicited telefacsimile message under the provisions of (a) of this subsection if the person knew or reasonably should have known that the recipient is a governmental entity.

(4) Notwithstanding subsection (3) of this section, it is unlawful to initiate any telefacsimile message to a recipient who has previously sent a written or telefacsimile message to the initiator clearly indicating that the recipient does not want to receive telefacsimile messages from the initiator.

(5) The unsolicited transmission of telefacsimile messages promoting goods or services for purchase by the recipient is a matter affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. The transmission of unsolicited telefacsimile messages is not reasonable in relation to the development and preservation of business. A violation of this section is an unfair or deceptive act in trade or commerce for the purpose of applying the consumer protection act, chapter 19.86 RCW. Damages to the recipient of telefacsimile messages in violation of this section are five hundred dollars or actual damages, whichever is greater.

(6) Nothing in this section shall be construed to prevent the Washington utilities and transportation commission from adopting additional rules regulating transmissions of telefacsimile messages. [1990 c 221 § 1.]

80.36.550 Enhanced state-wide 911 service—Advisory committee. (Effective unless Referendum Bill No. 42 is approved by the electorate at the November 1991 general election.) In conducting the study under RCW 80.36.5501 the commission shall appoint an advisory committee to provide advice and information related to enhanced 911 service throughout the state. Members of the advisory committee shall represent diverse geographical areas of the state, and to the extent possible, shall include, but not be limited to representatives from the national emergency number association, the associated public communications officers northwest chapter, the Washington state fire chiefs association, the state fire policy board, the Washington fire commissioners association, the Washington state patrol, the association of Washington cities, the Washington state association of counties, and representatives of local exchange telephone companies. [1990 c 260 § 3.]

Findings—1990 c 260: "The legislature finds that a state-wide emergency communications network of enhanced 911 service, allowing an immediate visual display of a caller's location, would serve to further the safety, health, and welfare of the state's citizens, and would save lives. The legislature further finds that additional information on the development of an efficient and workable state-wide enhanced 911 service is needed before a state-wide program is mandated." [1990 c 260 § 1.]

80.36.550 Repealed. (Effective December 5, 1991, if Referendum Bill No. 42 is approved by the electorate at the November 1991 general election.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

80.36.5501 Enhanced state-wide 911 service—Study. (Effective unless Referendum Bill No. 42 is approved by the electorate at the November 1991 general election.) The utilities and transportation commission shall study, by December 15, 1990, the feasibility of developing a state-wide system of enhanced 911 emergency service allowing an immediate visual display of the location of the caller. In conducting the study, the commission shall consider the ideal number of locations within the state for the purpose of routing emergency calls, the most efficient way to transfer emergency information to emergency response entities, cost estimates for the continuation of enhanced 911 in counties where the system is operable, cost estimates for the development of enhanced 911 in counties where a system has yet to be established, recommendations for the structure of a state-administered program of enhanced 911, alternatives to an enhanced 911 system in areas where cost or other factors preclude enhanced 911, specific recommendations for legislative action for developing a system of enhanced 911 throughout the state, and any other topics deemed appropriate by the commission. In conducting the study, the commission shall consult with, and to the extent possible, work with any other studies of the emergency communications network in the state. The commission shall report to the energy and utilities committees of the senate and the house of representatives by January 18, 1991, on the results of this study. [1990 c 260 § 2.]

Findings—1990 c 260: See note following RCW 80.36.550.

80.36.5501 Repealed. (Effective December 5, 1991, if Referendum Bill No. 42 is approved by the electorate at the November 1991 general election.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 80.50

ENERGY FACILITIES—SITE LOCATIONS

Sections	
80.50.030	Energy facility site evaluation council—Created—Membership—Support.
80.50.040	Energy facility site evaluation council—Powers enumerated.
80.50.105	Transmission facilities for petroleum products—Recommendations to governor.

80.50.030 Energy facility site evaluation council—Created—Membership—Support. (1) There is created and established the energy facility site evaluation council.

(2) (a) The chairman of the council shall be appointed by the governor with the advice and consent of the senate, shall have a vote on matters before the council, shall serve for a term coextensive with the term of the governor, and is removable for cause. The chairman may designate a member of the council to serve as acting chairman in the event of the chairman's absence. The chairman is a "state employee" for the purposes of chapter 42.18 RCW. As applicable, when attending meetings of the council[,] members may receive reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060, and are eligible for compensation under RCW 43.03.240.

(b) The chairman or a designee shall execute all official documents, contracts, and other materials on behalf of the council. The Washington state energy office shall provide all administrative and staff support for the council. The director of the energy office has supervisory authority over the staff of the council and shall employ such personnel as are necessary to implement this chapter. Not more than three such employees may be exempt from chapter 41.06 RCW.

(3) The council shall consist of the directors, administrators, or their designees, of the following departments, agencies, commissions, and committees or their statutory successors:

- (a) Department of ecology;
- (b) Department of fisheries;
- (c) Department of wildlife;
- (d) Parks and recreation commission;
- (e) Department of health;
- (f) State energy office;
- (g) Department of trade and economic development;
- (h) Utilities and transportation commission;
- (i) Office of financial management;
- (j) Department of natural resources;
- (k) Department of community development;
- (l) Department of agriculture;
- (m) Department of transportation.

(4) The appropriate county legislative authority of every county wherein an application for a proposed site is filed shall appoint a member or designee as a voting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the county which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site;

(5) The city legislative authority of every city within whose corporate limits an energy plant is proposed to be located shall appoint a member or designee as a voting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the city which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site.

(6) For any port district wherein an application for a proposed port facility is filed subject to this chapter, the port district shall appoint a member or designee as a nonvoting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the port district which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site. The provisions of this subsection shall not apply if the port district is the applicant, either singly or in partnership or association with any other person. [1990 c 12 § 3; 1988 c 36 § 60; 1986 c 266 § 51. Prior: 1985 c 466 § 71; 1985 c 67 § 1; 1985 c 7 § 151; prior: 1984 c 125 § 18; 1984 c 7 § 372; 1977 ex.s. c 371 § 3; 1975-'76 2nd ex.s. c 108 § 31; 1974 ex.s. c 171 § 46; 1970 ex.s. c 45 § 3.]

Effective date—1990 c 12: "This act shall take effect July 1, 1990." [1990 c 12 § 12.]

Severability—1986 c 266: See note following RCW 38.52.005.

Effective date—**Severability**—1985 c 466: See notes following RCW 43.31.005.

Severability—**Headings**—**Effective date**—1984 c 125: See RCW 43.63A.901 through 43.63A.903.

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—**Effective date**—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

80.50.040 Energy facility site evaluation council—**Powers enumerated.** The council shall have the following powers:

(1) To adopt, promulgate, amend, or rescind suitable rules and regulations, pursuant to chapter 34.05 RCW, to carry out the provisions of this chapter, and the policies and practices of the council in connection therewith;

(2) To develop and apply environmental and ecological guidelines in relation to the type, design, location, construction, and operational conditions of certification of energy facilities subject to this chapter;

(3) To establish rules of practice for the conduct of public hearings pursuant to the provisions of the Administrative Procedure Act, as found in chapter 34.05 RCW;

(4) To prescribe the form, content, and necessary supporting documentation for site certification;

(5) To receive applications for energy facility locations and to investigate the sufficiency thereof;

(6) To make and contract, when applicable, for independent studies of sites proposed by the applicant;

(7) To conduct hearings on the proposed location of the energy facilities;

(8) To prepare written reports to the governor which shall include: (a) A statement indicating whether the application is in compliance with the council's guidelines, (b) criteria specific to the site and transmission line routing, (c) a council recommendation as to the disposition of the application, and (d) a draft certification agreement when the council recommends approval of the application;

(9) To prescribe the means for monitoring of the effects arising from the construction and the operation of energy facilities to assure continued compliance with terms of certification and/or permits issued by the

council pursuant to chapter 90.48 RCW or subsection (12) of this section: **PROVIDED**, That any on-site inspection required by the council shall be performed by other state agencies pursuant to interagency agreement: **PROVIDED FURTHER**, That the council shall retain authority for determining compliance relative to monitoring;

(10) To integrate its site evaluation activity with activities of federal agencies having jurisdiction in such matters to avoid unnecessary duplication;

(11) To present state concerns and interests to other states, regional organizations, and the federal government on the location, construction, and operation of any energy facility which may affect the environment, health, or safety of the citizens of the state of Washington;

(12) To issue permits in compliance with applicable provisions of the federally approved state implementation plan adopted in accordance with the Federal Clean Air Act, as now existing or hereafter amended, for the new construction, reconstruction, or enlargement or operation of energy facilities: **PROVIDED**, That such permits shall become effective only if the governor approves an application for certification and executes a certification agreement pursuant to this chapter: **AND PROVIDED FURTHER**, That all such permits be conditioned upon compliance with all provisions of the federally approved state implementation plan which apply to energy facilities covered within the provisions of this chapter; and

(13) To serve as an interagency coordinating body for energy-related issues. [1990 c 12 § 4; 1985 c 67 § 2; 1979 ex.s. c 254 § 1; 1977 ex.s. c 371 § 4; 1975-'76 2nd ex.s. c 108 § 32; 1970 ex.s. c 45 § 4.]

Effective date—1990 c 12: See note following RCW 80.50.030.

Severability—**Effective date**—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

80.50.105 Transmission facilities for petroleum products—**Recommendations to governor.** In making its recommendations to the governor under this chapter regarding an application that includes transmission facilities for petroleum products, the council shall give appropriate weight to city or county facility siting standards adopted for the protection of sole source aquifers. [1991 c 200 § 1112.]

Effective dates—**Severability**—1991 c 200: See RCW 90.56.901 and 90.56.904.

Title 81 TRANSPORTATION

Chapters

81.04 Regulations—**General.**

81.24 Regulatory fees.

81.29 Common carriers—**Limitations on liability.**

81.34 Railroads—**State and federal regulation.**

81.44 Common carriers—**Equipment.**

- 81.54** Railroads—Inspection of industrial crossings.
81.77 Solid waste collection companies.
81.80 Motor freight carriers.
81.100 High occupancy vehicle systems.
81.104 High capacity transportation systems.
81.108 Low-level radioactive test sites.

Chapter 81.04

REGULATIONS—GENERAL

Sections

- 81.04.010 Definitions.
 81.04.520 Rate regulation study.

81.04.010 Definitions. As used in this title, unless specially defined otherwise or unless the context indicates otherwise:

"Commission" means the utilities and transportation commission.

"Commissioner" means one of the members of such commission.

"Corporation" includes a corporation, company, association or joint stock association.

"Low-level radioactive waste site operating company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling, or managing a low-level radioactive waste disposal site or sites located within the state of Washington.

"Low-level radioactive waste" means low-level waste as defined by RCW 43.145.010.

"Person" includes an individual, a firm or copartnership.

"Street railroad" includes every railroad by whatsoever power operated, or any extension or extensions, branch or branches thereof, for public use in the conveyance of persons or property for hire, being mainly upon, along, above or below any street, avenue, road, highway, bridge or public place within any one city or town, and includes all equipment, switches, spurs, tracks, bridges, right of trackage, subways, tunnels, stations, terminals and terminal facilities of every kind used, operated, controlled or owned by or in connection with any such street railroad, within this state.

"Street railroad company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town, owning, controlling, operating or managing any street railroad or any cars or other equipment used thereon or in connection therewith within this state.

"Railroad" includes every railroad, other than street railroad, by whatsoever power operated for public use in the conveyance of persons or property for hire, with all bridges, ferries, tunnels, equipment, switches, spurs, tracks, stations and terminal facilities of every kind used, operated, controlled or owned by or in connection with any such railroad.

"Railroad company" includes every corporation, company, association, joint stock association, partnership or person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any railroad or any cars or other equipment used thereon or in connection therewith within this state.

"Express company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, who shall engage in or transact the business of carrying any freight, merchandise or property for hire on the line of any common carrier operated in this state.

"Common carrier" includes all railroads, railroad companies, street railroads, street railroad companies, steamboat companies, express companies, car companies, sleeping car companies, freight companies, freight line companies, and every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town, owning, operating, managing or controlling any such agency for public use in the conveyance of persons or property for hire within this state.

"Vessel" includes every species of watercraft, by whatsoever power operated, for public use in the conveyance of persons or property for hire over and upon the waters within this state, excepting all towboats, tugs, scows, barges, and lighters, and excepting rowboats and sailing boats under twenty gross tons burden, open steam launches of five tons gross and under, and vessels under five tons gross propelled by gas, fluid, naphtha or electric motors.

"Steamboat company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers, appointed by any court whatsoever, owning, controlling, leasing, operating or managing any vessel over and upon the waters of this state.

"Transportation of property" includes any service in connection with the receiving, delivery, elevation, transfer in transit, ventilation, refrigeration, icing, storage and handling of the property transported, and the transmission of credit.

"Transportation of persons" includes any service in connection with the receiving, carriage and delivery of the person transported and his baggage and all facilities used, or necessary to be used in connection with the safety, comfort and convenience of the person transported.

"Public service company" includes every common carrier.

The term "service" is used in this title in its broadest and most inclusive sense. [1991 c 272 § 3; 1981 c 13 § 2; 1961 c 14 § 81.04.010. Prior: 1955 c 316 § 3; prior: 1929 c 223 § 1, part; 1923 c 116 § 1, part; 1911 c 117 § 8, part; RRS § 10344, part.]

Effective dates—1991 c 272: See RCW 81.108.901.

81.04.520 Rate regulation study. The commission, together with the Hanford low-level radioactive waste

disposal site operator and other state agencies and parties as necessary, shall study and assess the need for procedures that include, but are not limited to: Assuring that the operator's rates are fair, just, reasonable, and sufficient considering the value of the operator's leasehold and license interests, the unique nature of its business operations, and the operator's liability associated with the site and its investment incurred over the term of its operations, and the rate of return equivalent to that earned by comparable enterprises; and for ensuring that the commission's costs of regulation are recovered when the federal low-level waste policy act amendment of 1985 results in the regional site being the exclusive site option for Northwest low-level waste compact generators, after January 1, 1993. The commission shall issue its report for such procedures, containing comments by the operator and other parties, to the legislature by December 1, 1990, for its consideration. If, following receipt of the study, the legislature authorizes the commission to regulate the operator's rates, such rates shall not take effect until January 1, 1993, when the regional site will be the exclusive site option for Northwest low-level waste compact generators. [1990 c 21 § 8.]

Chapter 81.24 REGULATORY FEES

Sections
81.24.010 Companies to file reports of gross revenue and pay fees—General.

81.24.010 Companies to file reports of gross revenue and pay fees—General. Every company subject to regulation by the commission, except auto transportation companies, steamboat companies, wharfingers or warehousemen, motor freight carriers, and storage warehousemen shall, on or before the date specified by the commission for filing annual reports under RCW 81.04-.080, file with the commission a statement on oath showing its gross operating revenue from intrastate operations for the preceding calendar year, or portion thereof, and pay to the commission a fee equal to one-tenth of one percent of the first fifty thousand dollars of gross operating revenue, plus two-tenths of one percent of any gross operating revenue in excess of fifty thousand dollars, except railroad companies which shall each pay to the commission a fee equal to one and one-half percent of its intrastate gross operating revenue: **PROVIDED**, That the fee shall in no case be less than one dollar.

The percentage rates of gross operating revenue to be paid in any one year may be decreased by the commission for any class of companies subject to the payment of such fees, by general order entered before March 1st of such year, and for such purpose such companies shall be classified as follows: Railroad, express, sleeping car, and toll bridge companies shall constitute class two. Every other company subject to regulation by the commission, for which regulatory fees are not otherwise fixed by

law shall pay fees as herein provided and shall constitute additional classes according to kinds of businesses engaged in. [1990 c 48 § 2; 1977 ex.s. c 48 § 1; 1969 ex.s. c 210 § 6; 1963 c 59 § 11; 1961 c 14 § 81.24.010. Prior: 1957 c 185 § 1; 1955 c 125 § 4; prior: 1939 c 123 § 1, part; 1937 c 158 § 1, part; 1929 c 107 § 1, part; 1923 c 107 § 1, part; 1921 c 113 § 1, part; RRS § 10417, part.]

Chapter 81.29 COMMON CARRIERS—LIMITATIONS ON LIABILITY

Sections
81.29.050 Liability for baggage.

81.29.050 Liability for baggage. The liability of any common carrier subject to regulation by the commission for the loss of or damage to any baggage shall be set by the commission. The commission will review the amounts periodically and adjust the rate accordingly. [1991 c 21 § 1; 1961 c 14 § 81.29.050. Prior: 1945 c 209 § 1; Rem. Supp. 1945 § 10495-1. Formerly RCW 81.32.360.]

Chapter 81.34 RAILROADS—STATE AND FEDERAL REGULATION

Sections
81.34.010 through 81.34.110 Repealed.
81.34.900 Decodified.

81.34.010 through 81.34.110 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

81.34.900 Decodified. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 81.44 COMMON CARRIERS—EQUIPMENT

Sections
81.44.150 Repealed.
81.44.160 Repealed.

81.44.150 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

81.44.160 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 81.54

RAILROADS—INSPECTION OF INDUSTRIAL
CROSSINGS

Sections

81.54.030 Reimbursement of inspection cost.

81.54.030 Reimbursement of inspection cost. Every person operating any logging railroad or industrial railway shall, prior to July 1st of each year, file with the commission a statement showing the number of, and location, by name of highway, quarter section, section, township, and range of all crossings on his line and pay with the filing a fee for each crossing so reported. The commission shall, by order, fix the exact fee based on the cost of rendering such inspection service. All fees collected shall be deposited in the state treasury to the credit of the public service revolving fund. Intersections having one or more tracks shall be treated as a single crossing. Tracks separated a distance in excess of one hundred feet from the nearest track or group of tracks shall constitute an additional crossing. Where two or more independently operated railroads cross each other or the same highway intersection, each independent track shall constitute a separate crossing.

Every person failing to make the report and pay the fees required, shall be guilty of a misdemeanor and in addition be subject to a penalty of twenty-five dollars for each day that the fee remains unpaid after it becomes due. [1991 c 46 § 1; 1961 c 14 § 81.54.030. Prior: 1951 c 111 § 1; 1941 c 161 § 3; Rem. Supp. 1941 § 10511-3. Formerly RCW 81.52.320.]

Chapter 81.77

SOLID WASTE COLLECTION COMPANIES

(Formerly: Garbage and refuse collection companies)

Sections

81.77.180 Recyclable materials collection—Processing and marketing.
81.77.190 Curbside recycling—Reduced rate.

81.77.180 Recyclable materials collection—Processing and marketing. (1) A solid waste collection company collecting recyclable materials from residences shall utilize one or more private recycling businesses when arranging for the processing and marketing of such materials, if the following conditions are met:

(a) A recycling business is located within the county at the time the collection program commences or at any time that the solid waste collection company changes its existing processor;

(b) A local private recycling business is capable and competent to provide the processing and marketing service; and

(c) A local private recycling business offers to pay a price for the recyclable materials which is equal to or greater than the price offered by out-of-county private recyclers, or proposes a charge for the processing and marketing service which is equal to or less than the

charge for the service available from an out-of-county private recycler.

(2) This section shall not apply to:

(a) Cities or towns who exercise their authority under RCW 81.77.130 to provide residential curbside collection of recyclable materials;

(b) A solid waste collection company that is directed by a city, town, or county to utilize a publicly owned recyclable processing facility located within such city, town, or county; or

(c) Counties which exercise their authority under RCW 36.58.040 to contract for the residential curbside collection of source separated recyclables.

This section shall not apply to programs for the collection of source separated recyclable materials where rates to implement the programs have been filed with the commission prior to May 21, 1991.

(3) For the purposes of this section, "private recycling business" means any private for-profit or private not-for-profit firm that engages in the processing and marketing of recyclable materials.

(4) This section is not enforceable by complaint filed with the commission. [1991 c 319 § 403.]

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

81.77.190 Curbside recycling—Reduced rate. (1) If the commission authorizes a surcharge or reduced rate incentive based on a customer's participation in a company's curbside residential recycling program, customers participating in any other noncurbside recycling program approved by the jurisdiction shall be eligible for such incentives.

(2) For the purpose of this section, "reduced rate" means a residential solid waste collection rate incorporating a rebate, refund, or discount. It does not include any residential solid waste collection rate based on the volume or weight of solid waste set out for collection. [1991 c 319 § 406.]

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

Chapter 81.80

MOTOR FREIGHT CARRIERS

Sections

81.80.080 Application for permit.
81.80.300 Identification cab card, identification decal, stamp, or number—Mandatory—Fees, collection, disposition—Rules and regulations.
81.80.305 Markings required—Exemptions.
81.80.430 Brokers and forwarders.
81.80.440 Recovered materials transportation—When permit required—Rate regulation exemption—Definitions.
81.80.450 Recovered materials transportation—Evaluation of rate regulation exemption—Report to legislature—Required information—Rules.
81.80.460 Recovered materials transportation—Construction.

81.80.080 Application for permit. Application for permits shall be made to the commission in writing and

shall state the ownership, financial condition, equipment to be used and physical property of the applicant, the territory or route or routes in or over which the applicant proposes to operate, the nature of the transportation to be engaged in and such other information as the commission may require, and in case such application is that of a "contract carrier" shall have attached thereto photocopies of all contracts to furnish transportation covered by such application. [1991 c 41 § 1; 1961 c 14 § 81.80.080. Prior: 1935 c 184 § 6; RRS § 6382-6.]

81.80.300 Identification cab card, identification decal, stamp, or number—Mandatory—Fees, collection, disposition—Rules and regulations. The commission shall prescribe an identification cab card and identification decal or stamp or number which must be carried within the cab of each motive power vehicle of each motor carrier required to have a permit under this chapter.

The identification cab card and the decal or stamp or number provided for herein may be in such form and contain such information as required by the commission.

It shall be unlawful for any "common carrier" or "contract carrier" to operate any motor vehicle within this state unless there is carried within the cab of the motive power vehicle, either operating as a solo vehicle or in combination with trailers, the identification cab card and decal or stamp or number required by this section and the payment by such carrier of a total fee of up to ten dollars for each such decal or stamp or number plus the applicable gross weight fee prescribed by RCW 81.80.320: PROVIDED, That as to equipment operated between points in this state and points outside the state exclusively in interstate commerce, and as to equipment operated between points in this state and points outside the state in interstate commerce as well as points within this state in intrastate commerce, the commission may adopt rules and regulations specifying an alternative schedule of fees to that specified in RCW 81.80.320 as it may find to be reasonable and specifying the method of evidencing payment of such fees.

The commission may adopt rules and regulations imposing a reduced schedule of fees for short term operations, requiring reports of carriers, and imposing such conditions as the public interest may require with respect to the operation of such vehicles.

The commission shall not be required to collect the excise tax prescribed by RCW 82.44.020 for any fees collected under this chapter.

The decal or stamp or number required herein shall be issued annually under the rules and regulations of the commission, and shall be affixed to the identification cab card required by this section not later than February 1st of each year: PROVIDED, That such decal or stamp or number may be issued for the ensuing calendar year on and after the first day of November preceding and may be used from the date of issue until February 1st of the succeeding calendar year for which the same was issued.

It shall be unlawful for the owner of said permit, his agent, servant or employee, or any other person to use or

display any identification cab card and decal or stamp or number, the permit number or other insignia of authority from the commission after said permit has expired, been canceled or disposed of, or to operate any vehicle under permit without such identification cab card and decal or stamp or number.

The commission shall collect all fees provided in this section, and all such fees shall be deposited in the state treasury to the credit of the public service revolving fund. [1991 c 241 § 2; 1985 c 7 § 152; 1977 ex.s. c 63 § 1; 1971 ex.s. c 143 § 4; 1969 ex.s. c 210 § 13; 1967 c 170 § 1; 1961 c 14 § 81.80.300. Prior: 1935 c 184 § 26; RRS § 6382-26.]

Effective date—1971 ex.s. c 143: "Sections 4, 5, 6 and 7 of this 1971 amendatory act shall take effect on October 31, 1971." [1971 ex.s. c 143 § 9.]

81.80.305 Markings required—Exemptions. (1) All motor vehicles, other than those exempt under subsection (2) of this section, must display a permanent marking identifying the name or number, or both, on each side of the power units. For a motor vehicle that is a common or contract carrier under permit by the commission as described in subsection (3)(a), a private carrier under subsection (4), or a leased carrier as described in subsection (5) of this section, any required identification that is added, modified, or renewed after September 1, 1991, must be displayed on the driver and passenger doors of the power unit. The identification must be in a clearly legible style with letters no less than three inches high and in a color contrasting with the surrounding body panel.

(2) This section does not apply to (a) vehicles exempt under RCW 81.80.040, and (b) vehicles operated by private carriers that singly or in combination are less than thirty-six thousand pounds gross vehicle weight.

(3) If the motor vehicle is operated as (a) a common or contract carrier under a permit by the commission, the identification must contain the name of the permittee, or business name, and the permit number, or (b) a common or contract carrier holding both intrastate and interstate authority, the identification may be either the ICC certificate number or commission permit number.

(4) If the motor vehicle is a private carrier, the identification must contain the name and address of either the business operating the vehicle or the registered owner.

(5) If the motor vehicle is operated under lease, the vehicle must display either permanent markings or placards on the driver and passenger doors of the power unit. A motor vehicle under lease (a) that is operated as a common or contract carrier under permit by the commission must display identification as provided in subsection (3)(a) of this section, and (b) that is operated as a private carrier must display identification as provided in subsection (4) of this section. [1991 c 241 § 1.]

81.80.430 Brokers and forwarders. (1) A person who provides brokering or forwarding services for the transportation of property in intrastate commerce shall file with the commission and keep in effect, a surety bond or

deposit of satisfactory security, in a sum to be determined by the commission, but not less than five thousand dollars, conditioned upon such broker or forwarder making compensation to shippers, consignees, and carriers for all moneys belonging to them and coming into the broker's or forwarder's possession in connection with the transportation service.

(2) It is unlawful for a broker or forwarder to conduct business in this state without first securing appropriate authority from the Interstate Commerce Commission, if such authority is required, and registering with and providing satisfactory evidence of financial responsibility to the Washington utilities and transportation commission. Satisfactory evidence of financial responsibility shall consist of a surety bond or deposit of security. Compliance with this requirement may be met by filing a copy of a surety bond or trust fund approved by the Interstate Commerce Commission. The commission shall grant such registration without hearing, upon application and payment of a one-time registration fee as prescribed by the commission. For purposes of this subsection, a broker or forwarder conducts business in this state when the broker or forwarder, its employees, or agents is physically present in the state and is acting as a broker or forwarder.

(3) Failure to file the bond, deposit security, or provide satisfactory evidence of financial responsibility is sufficient cause for refusal of the commission to grant the application for a permit or registration. Failure to maintain the bond or the deposit of security is sufficient cause for cancellation of a permit or registration. [1991 c 146 § 1; 1990 c 109 § 1; 1989 c 60 § 2; 1988 c 31 § 2.]

81.80.440 Recovered materials transportation—When permit required—Rate regulation exemption—Definitions. (1) It is unlawful for a motor vehicle transporting recovered materials to perform a transportation service for compensation upon the public highways of this state without first having received a permit from the commission. The permits shall be granted upon a finding that the motor carrier is fit, willing, and able to provide transportation of recovered materials, and upon payment of the appropriate filing fee authorized by this chapter for other applications for operating authority, including payment of the annual regulatory fee imposed by RCW 81.80.320. The carriers are subject to the safety of operations and insurance requirements of the commission, but are not subject to rate regulation by the commission.

(2) The provisions of this section apply to motor vehicles when:

(a) Transporting recovered materials for a person from one or more sites generating ten thousand or more tons of recovered materials per year to a reprocessing facility or an end-use manufacturing site;

(b) Transporting recovered materials from a reprocessing facility to another reprocessing facility or to an end-use manufacturing site; or

(c) Transporting recovered mixed waste paper from a reprocessing facility to an energy recovery facility.

(3) For the purposes of this section, the following definitions shall apply:

(a) "Recovered materials" means those commodities collected for recycling or reuse, such as papers, glass, plastics, used wood, metals, yard waste, used oil, and tires, that if not collected for recycling would otherwise be destined for disposal or incineration. "Recovered materials" shall not include any wood waste or wood by-product generated from a logging, milling, or chipping activity;

(b) "Reprocessing facility" means a business registered under chapter 82.32 RCW or a nonprofit corporation identified under chapter 24.03 RCW that accepts or purchases recovered materials and prepares those materials for resale;

(c) "Mixed waste paper" means assorted low-value grades of paper that have not been separated into individual grades of paper at the point of collection; and

(d) "Energy recovery facility" means a facility designed to burn mixed waste paper as a fuel, except that such term does not include mass burn incinerators. [1991 c 148 § 1; 1990 c 123 § 1.]

81.80.450 Recovered materials transportation—Evaluation of rate regulation exemption—Report to legislature—Required information—Rules. (1) The department of trade and economic development, in conjunction with the utilities and transportation commission and the department of ecology, shall evaluate the effect of exempting motor vehicles transporting recovered materials from rate regulation as provided under RCW 81.80.440. The evaluation shall, at a minimum, describe the effect of such exemption on:

(a) The cost and timeliness of transporting recovered materials within the state;

(b) The volume of recovered materials transported within the state;

(c) The number of safety violations and traffic accidents related to transporting recovered materials within the state; and

(d) The availability of service related to transporting recovered materials from rural areas of the state.

(2) The department shall report the results of its evaluation to the appropriate standing committees of the legislature by October 1, 1993.

(3) The commission shall adopt rules requiring persons transporting recovered materials to submit information required under RCW 70.95.280. In adopting such rules, the commission shall include procedures to ensure the confidentiality of proprietary information. [1990 c 123 § 2.]

81.80.460 Recovered materials transportation—Construction. Nothing in *this act shall be construed as changing the provisions of RCW 81.77.010(8), nor shall *this act be construed as allowing any entity, other than a solid waste collection company authorized by the commission or an entity collecting solid waste from a city or town under the provisions of chapter 35.21 or 35A.21 RCW, to collect solid waste which may incidentally contain recyclable materials. [1990 c 123 § 3.]

*Reviser's note: "This act" [1990 c 123] consists of the enactment of RCW 81.80.440, 81.80.450, and 81.80.460.

Chapter 81.100

HIGH OCCUPANCY VEHICLE SYSTEMS

Sections

81.100.010	Purpose.
81.100.020	Definitions.
81.100.030	Employer tax.
81.100.040	Adoption of goals.
81.100.050	Survey of tax use.
81.100.060	Excise tax.
81.100.070	High occupancy vehicle account.
81.100.080	Use of funds.
81.100.090	Interlocal agreements.
81.100.100	Urban public transportation system.
81.100.900	Construction—Severability—Headings—1990 c 43.

81.100.010 Purpose. The need for mobility, growing travel demand, and increasing traffic congestion in urban areas necessitate accelerated development and increased utilization of the high occupancy vehicle system. RCW 81.100.030 and 81.100.060 provide taxing authority that counties can use in the near term to accelerate development and increase utilization of the high occupancy vehicle system by supplementing available federal, state, and local funds. [1990 c 43 § 12.]

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

(1) "Transit agency" means a city that operates a transit system, a public transportation benefit area, a county transportation authority, or a metropolitan municipal corporation.

(2) The "high occupancy vehicle system" includes high occupancy vehicle lanes, related high occupancy vehicle facilities, and high occupancy vehicle programs.

(3) "High occupancy vehicle lanes" mean lanes reserved for public transportation vehicles only or public transportation vehicles and private vehicles carrying no fewer than a specified number of passengers under RCW 46.61.165.

(4) "Related facilities" means park and ride lots, park and pool lots, ramps, bypasses, turnouts, signal preemption, and other improvements designed to maximize use of the high occupancy vehicle system.

(5) "High occupancy vehicle program" means advertising the high occupancy vehicle system, promoting carpool, vanpool, and transit use, providing vanpool vehicles, and enforcement of driving restrictions governing high occupancy vehicle lanes. [1990 c 43 § 13.]

81.100.030 Employer tax. (1) A county with a population of one million or more, or a county with a population of from two hundred ten thousand to less than one million that is adjoining a county with a population of one million or more, and having within its boundaries existing or planned high occupancy vehicle lanes on the state highway system, may, with voter approval impose an excise tax of up to two dollars per employee per

month on all employers or any class or classes of employers, public and private, including the state located in the agency's jurisdiction, measured by the number of full-time equivalent employees. The county imposing the tax authorized in this section may provide for exemptions from the tax to such educational, cultural, health, charitable, or religious organizations as it deems appropriate.

Counties may contract with the state department of revenue or other appropriate entities for administration and collection of the tax. Such contract shall provide for deduction of an amount for administration and collection expenses.

(2) The tax shall not apply to employment of a person when the employer has paid for at least half of the cost of a transit pass issued by a transit agency for that employee, valid for the period for which the tax would otherwise be owed.

(3) A county shall adopt rules which exempt from all or a portion of the tax any employer that has entered into an agreement with the county that is designed to reduce the proportion of employees who drive in single-occupant vehicles during peak commuting periods in proportion to the degree that the agreement is designed to meet the goals for the employer's location adopted under RCW 81.100.040.

The agreement shall include a list of specific actions that the employer will undertake to be entitled to the exemption. Employers having an exemption from all or part of the tax through this subsection shall annually certify to the county that the employer is fulfilling the terms of the agreement. The exemption continues as long as the employer is in compliance with the agreement.

If the tax authorized in RCW 81.100.060 is also imposed by the county, the total proceeds from both tax sources each year shall not exceed the maximum amount which could be collected under RCW 81.100.060. [1991 c 363 § 153; 1990 c 43 § 14.]

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

81.100.040 Adoption of goals. The legislature encourages counties, in conjunction with cities, metropolitan planning organizations, and transit agencies in metropolitan areas to adopt goals for reducing the proportion of commuters who drive in single-occupant vehicles during peak commuting periods. Any county imposing a tax under this chapter must adopt such goals. In adopting these goals, counties shall consider at least the following:

(1) Existing and anticipated levels of peak-period traffic congestion on roadways used by employees in commuting to work;

(2) Existing and anticipated levels of transit and vanpool service and carpool programs available to and from the worksite;

(3) Variations in employment density and employer size;

(4) Availability and cost of parking; and

(5) Consistency of the goals with the regional transportation plan. [1990 c 43 § 15.]

81.100.050 Survey of tax use. The department of transportation shall include in the annual transit report under RCW 35.58.2795 and 35.58.2796 an element describing actions taken under this chapter. On at least two occasions prior to December 31, 1998, the department shall include an evaluation of the effectiveness of such actions. [1990 c 43 § 16.]

81.100.060 Excise tax. A county with a population of one million or more and a county with a population of from two hundred ten thousand to less than one million that is adjoining a county with a population of one million or more, having within their boundaries existing or planned high occupancy vehicle lanes on the state highway system may, with voter approval, impose a local surcharge of not more than fifteen percent on the state motor vehicle excise tax paid under RCW 82.44.020(1) on vehicles registered to a person residing within the county. No surcharge may be imposed on vehicles licensed under RCW 46.16.070 except vehicles with an unladen weight of six thousand pounds or less, RCW 46.16.079, 46.16.080, 46.16.085, or 46.16.090.

Counties imposing a tax under this section shall contract, before the effective date of the resolution or ordinance imposing a surcharge, administration and collection to the state department of licensing, which shall deduct an amount, as provided by contract, for administration and collection expenses incurred by the department. All administrative provisions in chapters 82.03, 82.32, and 82.44 RCW shall, insofar as they are applicable to state motor vehicle excise taxes, be applicable to surcharges imposed under this section.

If the tax authorized in RCW 81.100.030 is also imposed by the county, the total proceeds from both tax sources each year shall not exceed the maximum amount which could be collected under this section. [1991 c 363 § 154; 1990 c 43 § 17.]

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

81.100.070 High occupancy vehicle account. Funds collected by the department of revenue or other entity under RCW 81.100.030, or by the department of licensing under RCW 81.100.060, less the deduction for collection expenses, shall be deposited in the high occupancy vehicle account hereby created in the custody of the state treasurer. On the first day of the months of January, April, July, and October of each year, the state treasurer shall distribute the funds in the account to the counties on whose behalf the funds were received. The state treasurer shall make the distribution under this section without appropriation. [1991 1st sp.s. c 13 §§ 105, 119; 1990 c 43 § 18.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

81.100.080 Use of funds. Funds collected under RCW 81.100.030 or 81.100.060 and any investment earnings accruing thereon shall be used by the county in a manner consistent with the regional transportation plan only for costs of collection, costs of preparing, adopting, and enforcing agreements under RCW 81.100.030(3), for construction of high occupancy vehicle lanes and related facilities, mitigation of environmental concerns that result from construction or use of high occupancy vehicle lanes and related facilities, payment of principal and interest on bonds issued for the purposes of this section, for high occupancy vehicle programs as defined in RCW 81.100.020(5), and for commuter rail projects in accordance with RCW 81.104.120. No funds collected under RCW 81.100.030 or 81.100.060 after June 30, 2000, may be pledged for the payment or security of the principal or interest on any bonds issued for the purposes of this section. Not more than ten percent of the funds may be used for transit agency high occupancy vehicle programs.

Priorities for construction of high occupancy vehicle lanes and related facilities shall be as follows:

(1)(a) To accelerate construction of high occupancy vehicle lanes on the interstate highway system, as well as related facilities;

(b) To finance or accelerate construction of high occupancy vehicle lanes on the noninterstate state highway system, as well as related facilities.

(2) To finance construction of high occupancy vehicle lanes on local arterials, as well as related facilities.

Moneys received by an agency under this chapter shall be used in addition to, and not as a substitute for, moneys currently used by the agency for the purposes specified in this section.

Counties may contract with cities or the state department of transportation for construction of high occupancy vehicle lanes and related facilities, and may issue general obligation bonds to fund such construction and use funds received under this chapter to pay the principal and interest on such bonds. [1990 c 43 § 19.]

81.100.090 Interlocal agreements. Counties imposing a tax under this chapter shall enter into an agreement through the interlocal cooperation act with the department of transportation. The agreement shall provide an opportunity for the department of transportation, cities and transit agencies having within their boundaries a portion of the existing or planned high occupancy vehicle system as contained in the regional transportation plan, to coordinate programming and operational decisions affecting the high occupancy vehicle system. If two or more adjoining counties impose a tax under RCW 81.100.030 or 81.100.060, the counties shall jointly enter one interlocal agreement with the department of transportation. [1990 c 43 § 20.]

81.100.100 Urban public transportation system. The high occupancy vehicle system is an urban public transportation system as defined in RCW 47.04.082. [1990 c 43 § 21.]

81.100.900 Construction—Severability—Headings—1990 c 43. See notes following RCW 47.76.100.

Chapter 81.104

HIGH CAPACITY TRANSPORTATION SYSTEMS

Sections

81.104.010	Purpose—Definition.
81.104.020	State policy roles.
81.104.030	Policy development outside central Puget Sound—Voter approval.
81.104.040	Policy development in central Puget Sound—Voter approval.
81.104.050	Expansion of service boundaries.
81.104.060	State role in planning and implementation.
81.104.070	Responsibility for system implementation.
81.104.080	Regional transportation planning.
81.104.090	Department of transportation responsibilities—Funding of planning projects.
81.104.100	Planning process.
81.104.110	Independent system plan oversight.
81.104.120	Commuter rail service.
81.104.130	Financial responsibility.
81.104.140	Dedicated funding sources.
81.104.150	Employer tax.
81.104.160	Motor vehicle excise tax.
81.104.170	Sales and use taxes.
81.104.180	Pledge of revenues for bond retirement.
81.104.190	Contract for collection of taxes.
81.104.900	Construction—Severability—Headings—1990 c 43.

High capacity transportation account: RCW 47.78.010.

81.104.010 Purpose—Definition. Increasing congestion on Washington's roadways calls for identification and implementation of high capacity transportation system alternatives. "High capacity transportation system" means a system of public transportation services within an urbanized region operating principally on exclusive rights of way, and the supporting services and facilities necessary to implement such a system, including high occupancy vehicle lanes, which taken as a whole, provides a substantially higher level of passenger capacity, speed, and service frequency than traditional public transportation systems operating principally in general purpose roadways. The legislature believes that local jurisdictions should coordinate and be responsible for high capacity transportation policy development, program planning, and implementation. The state should assist by working with local agencies on issues involving rights of way, partially financing projects meeting established state criteria including development and completion of the high occupancy vehicle lane system, authorizing local jurisdictions to finance high capacity transportation systems through voter-approved tax options, and providing technical assistance and information. [1991 c 318 § 1; 1990 c 43 § 22.]

81.104.020 State policy roles. The department of transportation's current policy role in transit is expanded to include other high capacity transportation development as part of a multimodal transportation system.

(1) The department of transportation shall implement a program for high capacity transportation coordination,

planning, and technical studies with appropriations from the high capacity transportation account.

(2) The department shall assist local jurisdictions and regional transportation planning organizations with high capacity transportation planning efforts. [1991 c 318 § 2; 1990 c 43 § 23.]

81.104.030 Policy development outside central Puget Sound—Voter approval. (1) In any county with a population of from two hundred ten thousand to less than one million that is not bordered by a county with a population of one million or more, and in each county with a population of less than two hundred ten thousand, city-owned transit systems, county transportation authorities, metropolitan municipal corporations, and public transportation benefit areas may elect to establish high capacity transportation service. Such agencies shall form a regional policy committee with proportional representation based upon population distribution within the designated service area and a representative of the department of transportation, or such agencies may use the designated metropolitan planning organization as the regional policy committee.

City-owned transit systems, county transportation authorities, metropolitan municipal corporations, and public transportation benefit areas participating in joint regional policy committees shall seek voter approval within their own service boundaries of a high capacity transportation system plan and financing plan.

(2) City-owned transit systems, county transportation authorities, metropolitan municipal corporations, and public transportation benefit areas in counties adjoining state or international boundaries are authorized to participate in the regional high capacity transportation programs of an adjoining state or Canadian province. [1991 c 318 § 3; 1991 c 309 § 2; (1991 c 363 § 155 repealed by 1991 c 309 § 6); 1990 c 43 § 24.]

Reviser's note: This section was amended by 1991 c 309 § 2 and by 1991 c 318 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

81.104.040 Policy development in central Puget Sound—Voter approval. (1) Agencies in each county with a population of one million or more, and in each county with a population of from two hundred ten thousand to less than one million bordering a county with a population of one million or more that are currently authorized to provide high capacity transportation planning and operating services, including but not limited to city-owned transit systems, county transportation authorities, metropolitan municipal corporations, and public transportation benefit areas, must establish through interlocal agreements a joint regional policy committee with proportional representation based upon the population distribution within each agency's designated service area, as determined by the parties to the agreement.

(a) The membership of the joint regional policy committee shall consist of locally elected officials who serve on the legislative authority of the existing transit systems

and a representative from the department of transportation. Nonvoting membership for elected officials from adjoining counties may be allowed at the committee's discretion.

(b) The joint regional policy committee shall be responsible for the preparation and adoption of a regional high capacity transportation implementation program, which shall include the system plan, project plans, and a financing plan. This program shall be in conformance with the regional transportation planning organization's regional transportation plan and consistent with RCW 81.104.080.

(c) The joint regional policy committee shall present a high capacity transportation system plan and financing plan to the boards of directors of the transit agencies within the service area for adoption.

(d) Transit agencies shall present the adopted high capacity transportation system plan and financing plan for voter approval within four years of the execution of the interlocal agreements. A simple majority vote is required for approval of the high capacity transportation system plan and financing plan in any service district within each county. The implementation program may proceed in any service area approving the system and financing plans.

(2) High capacity transportation planning, construction, operations, and funding shall be governed through the interlocal agreement process, including but not limited to provision for a cost allocation and distribution formula, service corridors, station area locations, right of way transfers, and feeder transportation systems. The interlocal agreement shall include a mechanism for resolving conflicts among parties to the agreement. [1991 c 318 § 4; 1990 c 43 § 25.]

81.104.050 Expansion of service boundaries. Regional high capacity transportation service boundaries may be expanded beyond the established service district through interlocal agreements among the transit agencies and the local jurisdictions within which such expanded service is proposed. [1991 c 318 § 5; 1990 c 43 § 26.]

81.104.060 State role in planning and implementation. (1) The state's planning role in high capacity transportation development as one element of a multimodal transportation system should facilitate cooperative state and local planning efforts.

(2) The department of transportation may serve as a contractor for high capacity transportation system and project design, administer construction, and assist agencies authorized to provide service in the acquisition, preservation, and joint use of rights of way.

(3) The department and local jurisdictions shall continue to cooperate with respect to the development of high occupancy vehicle lanes and related facilities, associated roadways, transfer stations, people mover systems developed either by the public or private sector, and other related projects.

(4) The department in cooperation with local jurisdictions shall develop policies which enhance the development of high speed interregional systems by both the private and the public sector. These policies may address joint use of rights of way, identification and preservation of transportation corridors, and joint development of stations and other facilities. [1991 c 318 § 6; 1990 c 43 § 27.]

81.104.070 Responsibility for system implementation.

(1) The state shall not become an operating agent for regional high capacity transportation systems.

(2) Agencies providing high capacity transportation service are responsible for planning, construction, operations, and funding including station area design and development, and parking facilities. Agencies may implement necessary contracts, joint development agreements, and interlocal government agreements. Agencies providing service shall consult with affected local jurisdictions and cooperate with comprehensive planning processes. [1990 c 43 § 28.]

81.104.080 Regional transportation planning. Where applicable, regional transportation plans and local comprehensive plans shall address the relationship between urban growth and an effective high capacity transportation system plan, and provide for cooperation between local jurisdictions and transit agencies.

(1) Regional high capacity transportation plans shall be included in the designated regional transportation planning organization's regional transportation plan review and update process to facilitate development of a coordinated multimodal transportation system and to meet federal funding requirements.

(2) Interlocal agreements between transit authorities, cities, and counties shall set forth conditions for assuring land uses compatible with development of high capacity transportation systems. These include developing sufficient land use densities through local actions in high capacity transportation corridors and near passenger stations, preserving transit rights of way, and protecting the region's environmental quality. The implementation program for high capacity transportation systems shall favor cities and counties with supportive land use plans. In developing local actions intended to carry out these policies cities and counties shall insure the opportunity for public comment and participation in the siting of such facilities, including stations or transfer facilities. Agencies providing high capacity transportation services, in cooperation with public and private interests, shall promote transit-compatible land uses and development which includes joint development.

(3) Interlocal agreements shall be consistent with state planning goals as set forth in chapter 36.70A RCW. Agreements shall also include plans for concentrated employment centers, mixed-use development, and housing densities that support high capacity transportation systems.

(4) Agencies providing high capacity transportation service and other transit agencies shall develop a cooperative process for the planning, development, operations, and funding of feeder transportation systems. Feeder systems may include existing and future intercity passenger systems and alternative technology people mover systems which may be developed by the private or public sector.

(5) Cities and counties along corridors designated in a high capacity transportation system plan shall enter into agreements with their designated regional transportation planning organizations, for the purpose of participating in a right of way preservation review process which includes activities to promote the preservation of the high capacity transportation rights of way. The regional transportation planning organization shall serve as the coordinator of the review process.

(a) Cities and counties shall forward all development proposals for projects within and adjoining to the rights of way proposed for preservation to the designated regional transportation planning organizations, which shall distribute the proposals for review by parties to the right of way preservation review process.

(b) The regional transportation planning organizations shall also review proposals for conformance with the regional transportation plan and associated regional development strategies. The designated regional transportation planning organization shall within ninety days compile local and regional agency comments and communicate the same to the originating jurisdiction and the joint regional policy committee. [1991 c 318 § 7; 1990 c 43 § 29.]

81.104.090 Department of transportation responsibilities—Funding of planning projects. The department of transportation shall be responsible for distributing amounts appropriated from the high capacity transportation account and shall prioritize funding requests based on criteria in subsection (3) of this section.

(1) The department shall establish an advisory council of policy and technical experts pursuant to RCW 47.01-.091 to assist in the review of requests for high capacity transportation account funds. The council shall be comprised of one representative from each congressional district, a designee of the governor, the executive director or a designee of the transportation improvement board, the director of the Washington state transportation center, and the chair or designee of the legislative transportation committee.

(2) State high capacity transportation account funds may provide up to eighty percent matching assistance for high capacity transportation planning efforts.

(3) Authorizations for state funding for high capacity transportation planning projects shall be subject to the following criteria:

(a) Conformance with the designated regional transportation planning organization's regional transportation plan;

(b) Local matching funds;

(c) Demonstration of projected improvement in regional mobility;

(d) Conformance with planning requirements prescribed in RCW 81.104.100, and if five hundred thousand dollars or more in state funding is requested, conformance with the requirements of RCW 81.104.110; and

(e) Establishment, through interlocal agreements, of a joint regional policy committee as defined in RCW 81.104.030 or 81.104.040.

(4) The department of transportation shall provide general review and monitoring of the system and project planning process prescribed in RCW 81.104.100. [1991 c 318 § 8; 1990 c 43 § 30.]

81.104.100 Planning process. To assure development of an effective high capacity transportation system, local authorities shall follow the following planning process:

(1) Regional, multimodal transportation planning is the ongoing urban transportation planning process conducted in each urbanized area by its regional transportation planning organization. During this process, regional transportation goals are identified, travel patterns are analyzed, and future land use and travel are projected. The process provides a comprehensive view of the region's transportation needs but does not select specified modes to serve those needs. The process shall identify a priority corridor or corridors for further study of high capacity transportation facilities if it is deemed feasible by local officials.

(2) High capacity transportation system planning is the detailed evaluation of a range of high capacity transportation system options, including: Do nothing, low capital, and ranges of higher capital facilities. To the extent possible this evaluation shall take into account the urban mass transportation administration's requirements identified in subsection (3) of this section.

High capacity transportation system planning shall proceed as follows:

(a) Organization and management. The responsible local transit agency or agencies shall define roles for various local agencies, review background information, provide for public involvement, and develop a detailed work plan for the system planning process.

(b) Development of options. Options to be studied shall be developed to ensure an appropriate range of technologies and service policies can be evaluated. A do-nothing option and a low capital option that maximizes the current system shall be developed. Several higher capital options that consider a range of capital expenditures for several candidate technologies shall be developed.

(c) Analysis methods. The local transit agency shall develop reports describing the analysis and assumptions for the estimation of capital costs, operating and maintenance costs, methods for travel forecasting, a financial plan and an evaluation methodology.

(d) The system plan submitted to the voters pursuant to RCW 81.104.140 shall address, but is not limited to the following issues:

(i) Identification of level and types of high capacity transportation services to be provided;

- (ii) A plan of high occupancy vehicle lanes to be constructed;
- (iii) Identification of route alignments and station locations with sufficient specificity to permit calculation of costs, ridership, and system impacts;
- (iv) Performance characteristics of technologies in the system plan;
- (v) Patronage forecasts;
- (vi) A financing plan describing: Phasing of investments; capital and operating costs and expected revenues; cost-effectiveness represented by a total cost per system rider and new rider estimate; estimated ridership and the cost of service for each individual high capacity line [lane]; and identification of the operating revenue to operating expense ratio.

The financing plan shall specifically differentiate the proposed use of funds between high capacity transportation facilities, high occupancy vehicle facilities, and expanded local/feeder service;

- (vii) Description of the relationship between the high capacity transportation system plan and adopted land use plans;
- (viii) An assessment of social, economic, and environmental impacts; and
- (ix) Mobility characteristics of the system presented, including but not limited to: Qualitative description of system/service philosophy and impacts; qualitative system reliability; travel time and number of transfers between selected residential, employment, and activity centers; and system and activity center mode splits.

(3) High capacity transportation project planning is the detailed identification of alignments, station locations, equipment and systems, construction schedules, environmental effects, and costs. High capacity transportation project planning shall proceed as follows: The local transit agency shall analyze and produce information needed for the preparation of environmental impact statements. The impact statements shall address the impact that development of such a system will have on abutting or nearby property owners. The process of identification of alignments and station locations shall include notification of affected property owners by normal legal publication. At minimum, such notification shall include notice on the same day for at least three weeks in at least two newspapers of general circulation in the county where such project is proposed. Special notice of hearings by the conspicuous posting of notice, in a manner designed to attract public attention, in the vicinity of areas identified for station locations or transfer sites shall also be provided.

In order to increase the likelihood of future federal funding, the project planning processes shall follow the urban mass transportation administration's requirements as described in "Procedures and Technical Methods for Transit Project Planning", published by the United States department of transportation, urban mass transportation administration, September 1986, or the most recent edition. Nothing in this subsection shall be construed to preclude detailed evaluation of more than one corridor in the planning process.

The department of transportation shall provide system and project planning review and monitoring in cooperation with the expert review panel identified in RCW 81.104.110. In addition, the local transit agency shall maintain a continuous public involvement program and seek involvement of other government agencies. [1991 1st sp.s. c 15 § 68; 1991 c 318 § 9; 1990 c 43 § 31.]

~~Construction—Severability—~~1991 1st sp.s. c 15: See note following RCW 46.68.110.

81.104.110 Independent system plan oversight. The legislature recognizes that the planning processes described in RCW 81.104.100 provide a recognized framework for guiding high capacity transportation studies. However, the process cannot guarantee appropriate decisions unless key study assumptions are reasonable.

To assure appropriate system plan assumptions and to provide for review of system plan results, an expert review panel shall be appointed to provide independent technical review for development of any system plan which is to be funded in whole or in part by the imposition of any voter-approved local option funding sources enumerated in RCW 81.104.140.

(1) The expert review panel shall consist of five to ten members who are recognized experts in relevant fields, such as transit operations, planning, emerging transportation technologies, engineering, finance, law, the environment, geography, economics, and political science.

(2) The expert review panel shall be selected cooperatively by the chair of the legislative transportation committee, the secretary of the department of transportation, and the governor to assure a balance of disciplines. In the case of counties adjoining another state or Canadian province the expert review panel membership shall be selected cooperatively with representatives of the adjoining state or Canadian province.

(3) The chair of the expert review panel shall be designated by the appointing authorities.

(4) The expert review panel shall serve without compensation but shall be reimbursed for expenses according to chapter 43.03 RCW.

(5) The panel shall carry out the duties set forth in subsections (6) and (7) of this section until the date on which an election is held to consider the high capacity transportation system and financing plans. Funds appropriated for expenses of the expert panel shall be administered by the department of transportation.

(6) The expert panel shall review all reports required in RCW 81.104.100(2) and shall concentrate on service modes and concepts, costs, patronage and financing evaluations.

(7) The expert panel shall provide timely reviews and comments on individual reports and study conclusions to the governor, the legislative transportation committee, the department of transportation, the regional transportation planning organization, the joint regional policy committee, and the submitting lead transit agency. In the case of counties adjoining another state or Canadian

province, the expert review panel shall provide its reviews, comments, and conclusions to the representatives of the adjoining state or Canadian province.

(8) The legislative transportation committee shall contract for consulting services for expert review panels. The amount of consultant support shall be negotiated with each expert review panel by the legislative transportation committee and shall be paid from appropriations for that purpose from the high capacity transportation account. [1991 c 318 § 10; 1991 c 309 § 3; 1990 c 43 § 32.]

Reviser's note: This section was amended by 1991 c 309 § 3 and by 1991 c 318 § 10, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

81.104.120 Commuter rail service. (1) City-owned transit service, county transportation authorities, metropolitan municipal corporations, and public transportation benefit areas may operate or contract for commuter rail service where it is deemed to be a reasonable alternative transit mode.

(2) A county may use funds collected under RCW 81.100.030 or 81.100.060 to contract with one or more transit agencies for planning, operation, and maintenance of commuter rail projects which: (a) Are consistent with the regional transportation plan; (b) have met the project planning and oversight requirements of RCW 81.104.100 and 81.104.110; and (c) have been approved by the voters within the service area of each transit agency participating in the project. The phrase "approved by the voters" includes specific funding authorization for the commuter rail project.

(3) The utilities and transportation commission shall maintain safety responsibility for passenger rail service operating on freight rail lines. Agencies providing passenger rail service on lines other than freight rail lines shall maintain safety responsibility for that service. [1990 c 43 § 33.]

81.104.130 Financial responsibility. Agencies providing high capacity transportation service shall determine optimal debt-to-equity ratios, establish capital and operations allocations, and establish fare-box recovery return policy. [1990 c 43 § 34.]

81.104.140 Dedicated funding sources. (1) Agencies authorized to provide high capacity transportation service, including city-owned transit systems, county transportation authorities, metropolitan municipal corporations and public transportation benefit areas, are hereby granted dedicated funding sources for such systems. These dedicated funding sources, as set forth in RCW 81.104.150, 81.104.160, and 81.104.170, are authorized only for agencies located in (a) each county with a population of two hundred ten thousand or more and (b) each county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand except for those counties that do not border a county with a population as described under (a) of this subsection.

(2) Agencies planning to construct and operate a high capacity transportation system should also seek other funds, including federal, state, local, and private sector assistance.

(3) Funding sources should satisfy each of the following criteria to the greatest extent possible:

- (a) Acceptability;
- (b) Ease of administration;
- (c) Equity;
- (d) Implementation feasibility;
- (e) Revenue reliability; and
- (f) Revenue yield.

(4) Agencies participating in regional high capacity transportation system development through interlocal agreements are authorized to levy and collect the following voter-approved local option funding sources:

- (a) Employer tax as provided in RCW 81.104.150;
- (b) Special motor vehicle excise tax as provided in RCW 81.104.160; and
- (c) Sales and use tax as provided in RCW 81.104.170.

Revenues from these taxes may be used only to support those purposes prescribed in subsection (10) of this section. Before the date of an election authorizing an agency to impose any of the taxes enumerated in this section and authorized in RCW 81.104.150, 81.104.160, and 81.104.170, the agency must comply with the process prescribed in RCW 81.104.100 (1) and (2) and 81.104.110. No construction on exclusive right of way may occur before the requirements of RCW 81.104.100(3) are met.

(5) Authorization in subsection (4) of this section shall not adversely affect the funding authority of existing transit agencies. Local option funds may be used to support implementation of interlocal agreements with respect to the establishment of regional high capacity transportation service. Local jurisdictions shall retain control over moneys generated within their boundaries, although funds may be commingled with those generated in other areas for planning, construction, and operation of high capacity transportation systems as set forth in the agreements.

(6) Agencies planning to construct and operate high capacity transportation systems may contract with the state for collection and transference of voter-approved local option revenue.

(7) Dedicated high capacity transportation funding sources authorized in RCW 81.104.150, 81.104.160, and 81.104.170 shall be subject to voter approval by a simple majority. A single ballot proposition may seek approval for one or more of the authorized taxing sources. The ballot title shall reference the document identified in subsection (8) of this section.

(8) Agencies shall provide to the registered voters in the area a document describing the systems plan and the financing plan set forth in RCW 81.104.100. It shall also describe the relationship of the system to regional issues such as development density at station locations and activity centers, and the interrelationship of the system to adopted land use and transportation demand management goals within the region. This document

shall be provided to the voters at least twenty days prior to the date of the election.

(9) For any election in which voter approval is sought for a high capacity transportation system plan and financing plan pursuant to RCW 81.104.040, a local voter's pamphlet shall be produced as provided in chapter 29.81A RCW.

(10) Agencies providing high capacity transportation service shall retain responsibility for revenue encumbrance, disbursement, and bonding. Funds may be used for any purpose relating to planning, construction, and operation of high capacity transportation systems, commuter rail systems, and feeder transportation systems. [1991 c 318 § 11; 1991 c 309 § 4; (1991 c 363 § 157 repealed by 1991 c 309 § 6); 1990 c 43 § 35.]

Reviser's note: This section was amended by 1991 c 309 § 4 and by 1991 c 318 § 11, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

81.104.150 Employer tax. Cities that operate transit systems, county transportation authorities, metropolitan municipal corporations, and public transportation benefit areas, solely for the purpose of providing high capacity transportation service may submit an authorizing proposition to the voters and if approved may impose an excise tax of up to two dollars per month on all employers located within the agency's jurisdiction, measured by the number of full-time equivalent employees. The rate of tax shall be approved by the voters. This tax may not be imposed by an agency when the county within which it is located is imposing an excise tax pursuant to RCW 81.100.030. The agency imposing the tax authorized in this section may provide for exemptions from the tax to such educational, cultural, health, charitable, or religious organizations as it deems appropriate. [1990 c 43 § 41.]

81.104.160 Motor vehicle excise tax. Any city that operates a transit system, county transportation authority, metropolitan municipal corporation, or public transportation benefit area, solely for the purpose of providing high capacity transportation service may submit an authorizing proposition to the voters, and if approved, may levy and collect an excise tax, at a rate approved by the voters, but not exceeding eighty one-hundredths of one percent on the value, under chapter 82.44 RCW, of every motor vehicle owned by a resident of such city, county transportation authority, metropolitan municipal corporation, or public transportation benefit area. In any county imposing a motor vehicle excise tax surcharge pursuant to RCW 81.100.060, the maximum tax rate under this section shall be reduced to a rate equal to eighty one-hundredths of one percent on the value less the equivalent motor vehicle excise tax rate of the surcharge imposed pursuant to RCW 81.100.060. This rate shall not apply to vehicles licensed under RCW 46.16.070 except vehicles with an unladen weight of six thousand pounds or less, RCW 46.16.079, 46.16.080, 46.16.085, or 46.16.090. [1991 c 318 § 12; 1990 c 43 § 42.]

81.104.170 Sales and use taxes. The legislative bodies of cities that operate transit systems, county transportation authorities, metropolitan municipal corporations, and public transportation benefit areas, solely for the purpose of providing high capacity transportation service may submit an authorizing proposition to the voters and if approved by a majority of persons voting, fix and impose a sales and use tax in accordance with the terms of this chapter.

The tax authorized pursuant to this section shall be in addition to the tax authorized by RCW 82.14.030 and shall be collected from those persons who are taxable by the state pursuant to chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within such city, county transportation authority, metropolitan municipal corporation, or public transportation benefit area, as the case may be. The maximum rate of such tax shall be approved by the voters and shall not exceed one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax). The maximum rate of such tax that may be imposed shall not exceed nine-tenths of one percent if a tax is imposed in the county under RCW 82.14.340. [1990 2nd ex.s. c 1 § 902; 1990 c 43 § 43.]

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

81.104.180 Pledge of revenues for bond retirement. Cities that operate transit systems, county transportation authorities, metropolitan municipal corporations, and public transportation benefit areas are authorized to pledge revenues from the employer tax authorized by RCW 81.104.150, the special motor vehicle excise tax authorized by RCW 81.104.160, and the sales and use tax authorized by RCW 81.104.170, to retire bonds issued solely for the purpose of providing high capacity transportation service. [1990 c 43 § 44.]

81.104.190 Contract for collection of taxes. Cities that operate transit systems, county transportation authorities, metropolitan municipal corporations, and public transportation benefit areas may contract with the state department of revenue or other appropriate entities for administration and collection of any tax authorized by RCW 81.104.150, 81.104.160, and 81.104.170. [1990 c 43 § 45.]

81.104.900 Construction—Severability—Headings—1990 c 43. See notes following RCW 47.76.100.

Chapter 81.108

LOW-LEVEL RADIOACTIVE TEST SITES

Sections	
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81.108.050	Maximum rates—Revisions.
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81.108.110	Competitive companies—Exemptions.
81.108.900	Construction.
81.108.901	Effective dates—1991 c 272.

81.108.010 Purpose. State and national policy directs that the management of low-level radioactive waste be accomplished by a system of interstate compacts and the development of regional disposal sites. The Northwest regional compact, comprised of the states of Alaska, Hawaii, Idaho, Montana, Oregon, Utah, and Washington, has as its disposal facility the low-level radioactive waste disposal site located near Richland, Washington. This site is expected to be the sole site for disposal of low-level radioactive waste for compact members effective January 1, 1993. Future closure of this site will require significant financial resources.

Low-level radioactive waste is generated by essential activities and services that benefit the citizens of the state. Washington state's low-level radioactive waste disposal site has been used by the nation and the Northwest compact as a disposal site since 1965. The public has come to rely on access to this site for disposal of low-level radioactive waste, which requires separate handling from other solid and hazardous wastes. The price of disposing of low-level radioactive waste at the Washington state low-level radioactive waste disposal site is anticipated to increase when the federal low-level radioactive waste policy amendments act of 1985 is implemented and waste generated outside the Northwest compact states is excluded.

When these events occur, to protect Washington and other Northwest compact states' businesses and services, such as electrical production, medical and university research, and private industries, upon which the public relies, there will be a need to regulate the rates charged by the operator of Washington's low-level radioactive waste disposal site. This chapter is adopted pursuant to section 8, chapter 21, Laws of 1990. [1991 c 272 § 1.]

81.108.020 Definitions. Definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commission" means the Washington utilities and transportation commission.

(2) "Effective rate" means the highest permissible rate, calculated as the lowest contract rate plus an administrative fee, if applicable, determined pursuant to RCW 81.108.040.

(3) "Extraordinary volume" means volumes of low-level radioactive waste delivered to a site caused by non-recurring events, outside normal operations of a generator, that are in excess of twenty thousand cubic feet or twenty percent of the preceding year's total volume at such site, whichever is less.

(4) "Extraordinary volume adjustment" means a mechanism that allocates the potential rate reduction benefits of an extraordinary volume between all generators and the generator responsible for such extraordinary volume as described in RCW 81.108.070.

(5) "Generator" means a person, partnership, association, corporation, or any other entity whatsoever that, as a part of its activities, produces low-level radioactive waste.

(6) "Inflation adjustment" means a mechanism that adjusts the maximum disposal rate by a percentage equal to the change in price levels in the preceding period, as measured by a common, verifiable price index as determined in RCW 81.108.040.

(7) "Initial rate proceeding" means the proceeding described in RCW 81.108.040.

(8) "Maximum disposal rate" means the rate described in RCW 81.108.050.

(9) "Site" means a location, structure, or property used or to be used for the storage, treatment, or disposal of low-level radioactive waste for compensation within the state of Washington.

(10) "Site operator" means a low-level radioactive waste site operating company as defined in RCW 81.04.010.

(11) "Volume adjustment" means a mechanism that adjusts the maximum disposal rate in response to material changes in volumes of waste deposited at the site during the preceding period so as to provide a level of total revenues sufficient to recover the costs to operate and maintain the site. [1991 c 272 § 2.]

81.108.030 Commission—Powers. (1) The commission shall have jurisdiction over the sites and site operators as set forth in this chapter.

(2)(a) The commission shall establish rates to be charged by site operators. In establishing the rates, the commission shall assure that they are fair, just, reasonable, and sufficient considering the value of the site operator's leasehold and license interests, the unique nature of its business operations, the site operator's liability associated with the site, its investment incurred over the term of its operations, and the rate of return equivalent to that earned by comparable enterprises. The rates shall only take effect following a finding that the site operator is a monopoly pursuant to RCW 81.108.100.

(b) In exercising the power in this subsection the commission may use any standard, formula, method, or theory of valuation reasonably calculated to arrive at the objective of prescribing and authorizing fair, just, reasonable, and sufficient rates. The relation of site operator expenses to site operator revenues may be deemed the proper test of a reasonable return.

(3) In all respects in which the commission has power and authority under this chapter, applications and complaints may be made and filed with it, process issued, hearings held, opinions, orders, and decisions made and filed, petitions for rehearing filed and acted upon, and petitions for review to the superior court filed therewith, appeals filed with the appellate courts of this state, considered and disposed of by said courts in the manner, under the conditions, and subject to the limitations, and with the effect specified in this title for public service companies generally.

(4) At any time after January 1, 1992, the commission may: (a) Prescribe a system of accounts for site operators using as a starting point the existing system used by site operators; (b) audit the books of site operators; (c) obtain books and records from site operators; (d) assess penalties; and (e) require semiannual reports regarding the results of operations for the site.

(5) The commission may adopt rules necessary to carry out its functions under this chapter. [1991 c 272 § 4.]

81.108.040 Rates—Initial determination—Fees.

(1) On or before March 1, 1992, site operators shall file a request with the commission to establish an initial maximum disposal rate. The filing shall include, at a minimum, testimony, exhibits, workpapers, summaries, annual reports, cost studies, proposed tariffs, and other documents as required by the commission in rate cases generally under its jurisdiction.

(2) After receipt of a request, the commission shall set the request for a hearing and require the site operator to provide for notice to all known customers that ship or deliver waste to the site. The proceedings before the commission shall be conducted in accordance with chapter 34.05 RCW and rules of procedure established by the commission.

(3) No later than January 1, 1993, the commission shall establish the initial maximum disposal rates that may be charged by site operators.

(4) In the initial rate proceeding the commission also shall determine the factors necessary to calculate the inflation, volume, and extraordinary volume adjustments.

(5) The commission also shall determine the administrative fee, which shall be a percentage or an amount that represents increased administrative costs associated with acceptance of small volumes of waste by a site operator. The administrative fee may be revised by the commission from time to time upon its own motion or upon the petition of an interested person.

(6) The rates specified in this section shall only take effect following a finding that the site operator is a monopoly pursuant to RCW 81.108.100. [1991 c 272 § 5.]

81.108.050 Maximum rates—Revisions. (1) The maximum disposal rates that a site operator may charge generators shall be determined in accordance with this section. The rates shall include all charges for disposal services at the site.

(2) Initially, the maximum disposal rates shall be the initial rates established pursuant to RCW 81.108.040.

(3) Subsequently, the maximum disposal rates shall be adjusted semiannually in January and July of each year to incorporate inflation and volume adjustments. Such adjustments shall take effect thirty days after filing with the commission unless the commission authorizes that the adjustments take effect earlier, or the commission contests the calculation of the adjustments, in which case the commission may suspend the filing. A site operator shall provide notice to its customers concurrent with the filing.

(4)(a) Subsequently, a site operator may also file for revisions to the maximum disposal rates due to:

(i) Changes in any governmentally imposed fee, surcharge, or tax assessed on a volume or a gross revenue basis against or collected by the site operator, including site closure fees, perpetual care and maintenance fees, business and occupation taxes, site surveillance fees, leasehold excise taxes, commission regulatory fees, municipal taxes, and a tax or payment in lieu of taxes authorized by the state to compensate the county in which a site is located for that county's legitimate costs arising out of the presence of that site within that county; or

(ii) Factors outside the control of the site operator such as a material change in regulatory requirements regarding the physical operation of the site.

(b) Revisions to the maximum disposal rate shall take effect thirty days after filing with the commission unless the commission suspends the filing or authorizes the proposed adjustments to take effect earlier.

(5) Upon establishment of a contract rate pursuant to RCW 81.108.060 for a disposal fee, the site operator may not collect a disposal fee that is greater than the effective rate. The effective rate shall be in effect so long as such contract rate remains in effect. Adjustments to the maximum disposal rates may be made during the time an effective rate is in place. Contracts for disposal of extraordinary volumes pursuant to RCW 81.108.070 shall not be considered in determining the effective rate.

(6) The site operator may petition the commission for new maximum disposal rates at any time. Upon receipt of such a petition, the commission shall set the matter for hearing and shall issue an order within seven months of the filing of the petition. The petition shall be accompanied by the documents required to accompany the filing for initial rates. The hearing on the petition shall be conducted in accordance with the commission's rules of practice and procedure.

(7) This section shall only take effect following a finding that the site operator is a monopoly pursuant to RCW 81.108.100. [1991 c 272 § 6.]

81.108.060 Contracted disposal rates. (1) At any time, a site operator may contract with any person to provide a contract disposal rate lower than the maximum disposal rate.

(2) A contract or contract amendment shall be submitted to the commission for approval at least thirty days before its effective date. The commission may approve the contract or suspend the contract and set it for hearing. If the commission takes no action within thirty days of filing, the contract or amendment shall go into effect according to its terms. Each contract filing shall be accompanied with documentation to show that the contract does not result in discrimination between generators receiving like and contemporaneous service under substantially similar circumstances and provides for the recovery of all costs associated with the provision of the service.

(3) This section shall only take effect following a finding that the site operator is a monopoly pursuant to RCW 81.108.100. [1991 c 272 § 7.]

81.108.070 Extraordinary volume adjustment. (1) In establishing the extraordinary volume adjustment, unless the site operator and generator of the extraordinary volume agree to a contract disposal rate, one-half of the extraordinary volume delivery shall be priced at the maximum disposal rate and one-half shall be priced at the site operator's incremental cost to receive the delivery. Such incremental cost shall be determined in the initial rate proceeding.

(2) For purposes of the subsequent calculation of the volume adjustment, one-half of the total extraordinary volume shall be included in the calculation.

(3) This section shall only take effect following a finding that the site operator is a monopoly pursuant to RCW 81.108.100. [1991 c 272 § 8.]

81.108.080 Complaints—Hearings. (1) At any time, the commission or an interested person may file a complaint against a site operator alleging that the rates established pursuant to RCW 81.108.040 or 81.108.050 are not in conformity with the standards set forth in RCW 81.108.030 or that the site operator is otherwise not acting in conformity with the requirements of this chapter. Upon filing of the complaint, the commission shall cause a copy of the complaint to be served upon the site operator. The complaining party shall have the burden of proving that the maximum disposal rates determined pursuant to RCW 81.108.050 are not just, fair, reasonable, or sufficient. The hearing shall conform to the rules of practice and procedure of the commission for other complaint cases.

(2) The commission shall encourage alternate forms of dispute resolution to resolve disputes between a site operator and any other person regarding matters covered by this chapter. [1991 c 272 § 9.]

81.108.090 Revenue statement—Fees. (1) A site operator shall, on or before May 1, 1992, and each year thereafter, file with the commission a statement showing its gross operating revenue from intrastate operations for the preceding calendar year, or portion thereof, and pay to the commission a fee equal to one percent of the amount of the gross operating revenue, exclusive of site surveillance fees, perpetual care and maintenance fees, site closure fees, and state or federally imposed out-of-region surcharges.

(2) Fees collected under this chapter shall reasonably approximate the cost of supervising and regulating site operators. The commission may order a decrease in fees by March 1st of any year in which it determines that the moneys then in the radioactive waste disposal companies account of the public service revolving fund and the fees currently to be paid will exceed the reasonable cost of supervising and regulating site operators.

(3) Fees collected under this section or under any other provision of this chapter shall be paid to the commission and shall be transmitted to the state treasurer

within thirty days to be deposited to the credit of the public service revolving fund. [1991 c 272 § 10.]

81.108.100 Exemptions—Monopolies—Hearings—Rates. (1) A low-level waste disposal site operator is exempt as specified in RCW 81.108.030(2)(a), 81.108.040(6), 81.108.050(7), 81.108.060(3), and 81.108.070(3) unless a monopoly situation exists with respect to the site operated by such site operator. A monopoly situation exists if either of the following is present:

(a) No disposal facility is available to Northwest compact generators of low-level radioactive waste other than the site or sites operated by such site operator or its affiliates; or

(b) Disposal rates at other sites are not reasonable alternatives for Northwest compact generators, considering: Disposal rates at other facilities; current disposal rates charged by the site operator; historic relationships between the site operator's rates and rates at other facilities; and changes in the operator's rates considering changes in waste volumes, taxes, and fees. A monopoly situation does not exist if either of the following facilities operates or is projected to operate after December 31, 1992:

(i) Any existing low-level radioactive waste disposal site outside the state of Washington, other than facilities operated by affiliates of a site operator, provided that such site or sites do not charge disposal rates that discriminate against Northwest compact generators, except to the extent, through December 31, 1994, such discrimination is authorized by amendment of current federal law.

(ii) An existing facility within the Northwest compact not receiving low-level radioactive waste offers to receive such waste under substantially similar terms and conditions.

(2) The exemption shall be in effect until such time as the commission finds, after notice and hearing, upon motion by the commission or upon petition by any interested party, that a monopoly situation exists or will exist as of January 1, 1993. The finding shall be based upon application of the criteria set forth in this section. The commission may assess a site operator for all of the commission's costs of supervision and regulation prior to and relative to determining whether the exemption applies to the site operator. If the commission determines that a site operator is not subject to the exemption, it shall collect its costs of supervision and regulation under RCW 81.108.090.

(3) When an exemption is in effect, any increase in the rates charged by the operator effective January 1, 1993, for services other than the base rate for disposal of solid material in packages of twelve cubic feet or less shall be no more than the percentage increase in the base rate in effect on January 1, 1993. [1991 c 272 § 11.]

81.108.110 Competitive companies—Exemptions. (1) At any time after this chapter has been implemented with respect to a site operator, such site operator may

petition the commission to be classified as competitive. The commission may initiate classification proceedings on its own motion. The commission shall enter its final order with respect to classification within seven months from the date of filing of a company's petition or the commission's motion.

(2) The commission shall classify a site operator as a competitive company if the commission finds, after notice and hearing, that the disposal services offered are subject to competition because the company's customers have reasonably available alternatives. In determining whether a company is competitive, the commission's consideration shall include, but not be limited to:

(a) Whether the system of interstate compacts and regional disposal sites established by federal law has been implemented so that the Northwest compact site located near Richland, Washington is the exclusive site option for disposal by customers within the Northwest compact states;

(b) Whether waste generated outside the Northwest compact states is excluded; and

(c) The ability of alternative disposal sites to make functionally equivalent services readily available at competitive rates, terms, and conditions.

(3) The commission may reclassify a competitive site operator if reclassification would protect the public interest as set forth in this section.

(4) Competitive low-level radioactive waste disposal companies shall be exempt from commission regulation and fees during the time they are so classified. [1991 c 272 § 12.]

81.108.900 Construction. Nothing in this chapter shall be construed to affect the jurisdiction of another state agency. [1991 c 272 § 13.]

81.108.901 Effective dates—1991 c 272. (1) Sections 1 through 15 and 22 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions. Sections 1 through 14 and 22 of this act shall take effect July 1, 1991, and section 15 of this act shall take effect immediately [May 20, 1991].

(2) Sections 16 through 21 and 23 of this act shall take effect January 1, 1993. [1991 c 272 § 24.]

**Title 82
EXCISE TAXES**

Chapters

- 82.01** Department of revenue.
- 82.02** General provisions.
- 82.04** Business and occupation tax.
- 82.08** Retail sales tax.
- 82.12** Use tax.
- 82.14** Counties, cities and metropolitan municipal corporations—Retail sales and use taxes.
- 82.14B** Counties—Tax on telephone access line use.
- 82.16** Public utility tax.

- 82.23A** Petroleum products—Underground storage tank program funding.
- 82.23B** Oil spill response tax.
- 82.24** Tax on cigarettes.
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- 82.29A** Leasehold excise tax.
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- 82.44** Motor vehicle excise tax.
- 82.45** Excise tax on real estate sales.
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- 82.47** Border area motor vehicle fuel and special fuel tax.
- 82.49** Watercraft excise tax.
- 82.50** Mobile homes, travel trailers, and campers excise tax.
- 82.64** Carbonated beverage tax.
- 82.65** Hospitals—Medicaid receipts.
- 82.80** Local option transportation taxes.

**Chapter 82.01
DEPARTMENT OF REVENUE**

Sections

- 82.01.120 Recodified as RCW 82.33.020.
- 82.01.125 Recodified as RCW 82.33.030.
- 82.01.130 Recodified as RCW 82.33.010.
- 82.01.135 Recodified as RCW 82.33.040.

82.01.120 Recodified as RCW 82.33.020. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

82.01.125 Recodified as RCW 82.33.030. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

82.01.130 Recodified as RCW 82.33.010. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

82.01.135 Recodified as RCW 82.33.040. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

**Chapter 82.02
GENERAL PROVISIONS**

Sections

- 82.02.020 State preempts certain tax fields—Fees prohibited for the development of land or buildings—Voluntary payments by developers authorized—Limitations—Exceptions.
- 82.02.030 Additional tax rates.

82.02.050	Impact fees—Intent.
82.02.060	Impact fees—Local ordinances—Required provisions.
82.02.070	Impact fees—Retained in special accounts—Limitations on use—Administrative appeals.
82.02.080	Impact fees—Refunds.
82.02.090	Impact fees—Definitions.

82.02.020 State preempts certain tax fields—Fees prohibited for the development of land or buildings—Voluntary payments by developers authorized—Limitations—Exceptions. Except only as expressly provided in RCW 67.28.180 and 67.28.190 and the provisions of chapter 82.14 RCW, the state preempts the field of imposing taxes upon retail sales of tangible personal property, the use of tangible personal property, parimutuel wagering authorized pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county, town, or other municipal subdivision shall have the right to impose taxes of that nature. Except as provided in RCW 82.02.050 through 82.02.090, no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. However, this section does not preclude dedications of land or easements within the proposed development or plat which the county, city, town, or other municipal corporation can demonstrate are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.

This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat. A local government shall not use such voluntary agreements for local off-site transportation improvements within the geographic boundaries of the area or areas covered by an adopted transportation program authorized by chapter 39.92 RCW. Any such voluntary agreement is subject to the following provisions:

(1) The payment shall be held in a reserve account and may only be expended to fund a capital improvement agreed upon by the parties to mitigate the identified, direct impact;

(2) The payment shall be expended in all cases within five years of collection; and

(3) Any payment not so expended shall be refunded with interest at the rate applied to judgments to the property owners of record at the time of the refund; however, if the payment is not expended within five years due to delay attributable to the developer, the payment shall be refunded without interest.

No county, city, town, or other municipal corporation shall require any payment as part of such a voluntary agreement which the county, city, town, or other municipal corporation cannot establish is reasonably necessary as a direct result of the proposed development or plat.

Nothing in this section prohibits cities, towns, counties, or other municipal corporations from collecting reasonable fees from an applicant for a permit or other governmental approval to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW.

This section does not limit the existing authority of any county, city, town, or other municipal corporation to impose special assessments on property specifically benefitted thereby in the manner prescribed by law.

Nothing in this section prohibits counties, cities, or towns from imposing or permits counties, cities, or towns to impose water, sewer, natural gas, drainage utility, and drainage system charges: PROVIDED, That no such charge shall exceed the proportionate share of such utility or system's capital costs which the county, city, or town can demonstrate are attributable to the property being charged: PROVIDED FURTHER, That these provisions shall not be interpreted to expand or contract any existing authority of counties, cities, or towns to impose such charges.

Nothing in this section prohibits a transportation benefit district from imposing fees or charges authorized in RCW 36.73.120 nor prohibits the legislative authority of a county, city, or town from approving the imposition of such fees within a transportation benefit district.

Nothing in this section prohibits counties, cities, or towns from imposing transportation impact fees authorized pursuant to chapter 39.92 RCW.

Nothing in this section prohibits counties, cities, or towns from requiring property owners to provide relocation assistance to tenants under RCW 59.18.440 and 59.18.450.

This section does not apply to special purpose districts formed and acting pursuant to Titles 54, 56, 57, or 87 RCW, nor is the authority conferred by these titles affected. [1990 1st ex.s. c 17 § 42; 1988 c 179 § 6; 1987 c 327 § 17; 1982 1st ex.s. c 49 § 5; 1979 ex.s. c 196 § 3; 1970 ex.s. c 94 § 8; 1967 c 236 § 16; 1961 c 15 § 82-.02.020. Prior: (i) 1935 c 180 § 29; RRS § 8370-29. (ii) 1949 c 228 § 28; 1939 c 225 § 22; 1937 c 227 § 24; Rem. Supp. 1949 § 8370-219. Formerly RCW 82.32.370.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Severability—Prospective application—Section captions—1988 c 179: See RCW 39.92.900 and 39.92.901.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

Effective date—1979 ex.s. c 196: See note following RCW 82.04.240.

Severability—1970 ex.s. c 94: See RCW 82.14.900.

82.02.030 Additional tax rates. (1) The rate of the additional taxes under RCW 54.28.020(2), 54.28.025(2), 66.24.210(2), 66.24.290(2), 82.04.2901, 82.16.020(2), 82.26.020(2), 82.27.020(5), and 82.29A.030(2) shall be seven percent; and

(2) The rate of the additional taxes under RCW 82.08.150(4) shall be fourteen percent. [1990 c 42 §

319. Prior: 1987 1st ex.s. c 9 § 6; 1987 c 472 § 15; 1987 c 80 § 4; 1986 c 296 § 5; 1985 c 471 § 9; 1983 2nd ex.s. c 3 § 6; 1983 c 7 § 8; 1982 2nd ex.s. c 14 § 1; 1982 1st ex.s. c 35 § 31.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Severability—Effective date—1987 1st ex.s. c 9: See notes following RCW 46.29.050.

Severability—1987 c 472: See RCW 79.71.900.

Severability—Effective date—1986 c 296: See notes following RCW 48.14.020.

Severability—Effective date—1985 c 471: See notes following RCW 82.04.260.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Construction—Severability—Effective dates—1983 c 7: See notes following RCW 82.08.020.

Effective date—Applicability—1982 2nd ex.s. c 14: "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.

The tax rates imposed under this act are effective on the dates designated in this act notwithstanding the date this act becomes law under Article III, section 12 of the state Constitution." [1982 2nd ex.s. c 14 § 3.]

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

82.02.050 Impact fees—Intent. (1) It is the intent of the legislature:

(a) To ensure that adequate facilities are available to serve new growth and development;

(b) To promote orderly growth and development by establishing standards by which counties, cities, and towns may require, by ordinance, that new growth and development pay a proportionate share of the cost of new facilities needed to serve new growth and development; and

(c) To ensure that impact fees are imposed through established procedures and criteria so that specific developments do not pay arbitrary fees or duplicative fees for the same impact.

(2) Counties, cities, and towns that are required or choose to plan under RCW 36.70A.040 are authorized to impose impact fees on development activity as part of the financing for public facilities, provided that the financing for system improvements to serve new development must provide for a balance between impact fees and other sources of public funds and cannot rely solely on impact fees.

(3) The impact fees:

(a) Shall only be imposed for system improvements that are reasonably related to the new development;

(b) Shall not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development; and

(c) Shall be used for system improvements that will reasonably benefit the new development.

(4) Impact fees may be collected and spent only for the public facilities defined in RCW 82.02.090 which are addressed by a capital facilities plan element of a comprehensive land use plan adopted pursuant to the provisions of RCW 36.70A.070 or the provisions for

comprehensive plan adoption contained in chapter 36.70, 35.63, or 35A.63 RCW. After July 1, 1993, continued authorization to collect and expend impact fees shall be contingent on the county, city, or town adopting or revising a comprehensive plan in compliance with RCW 36.70A.070, and on the capital facilities plan identifying:

(a) Deficiencies in public facilities serving existing development and the means by which existing deficiencies will be eliminated within a reasonable period of time;

(b) Additional demands placed on existing public facilities by new development; and

(c) Additional public facility improvements required to serve new development.

If the capital facilities plan of the county, city, or town is complete other than for the inclusion of those elements which are the responsibility of a special district, the county, city, or town may impose impact fees to address those public facility needs for which the county, city, or town is responsible. [1990 1st ex.s. c 17 § 43.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

82.02.060 Impact fees—Local ordinances—Required provisions. The local ordinance by which impact fees are imposed:

(1) Shall include a schedule of impact fees which shall be adopted for each type of development activity that is subject to impact fees, specifying the amount of the impact fee to be imposed for each type of system improvement. The schedule shall be based upon a formula or other method of calculating such impact fees. In determining proportionate share, the formula or other method of calculating impact fees shall incorporate, among other things, the following:

(a) The cost of public facilities necessitated by new development;

(b) An adjustment to the cost of the public facilities for past or future payments made or reasonably anticipated to be made by new development to pay for particular system improvements in the form of user fees, debt service payments, taxes, or other payments earmarked for or proratable to the particular system improvement;

(c) The availability of other means of funding public facility improvements;

(d) The cost of existing public facilities improvements; and

(e) The methods by which public facilities improvements were financed;

(2) May provide an exemption for low-income housing, and other development activities with broad public purposes, from these impact fees, provided that the impact fees for such development activity shall be paid from public funds other than impact fee accounts;

(3) Shall provide a credit for the value of any dedication of land for, improvement to, or new construction of any system improvements provided by the developer, to facilities that are identified in the capital facilities plan and that are required by the county, city, or town as a condition of approving the development activity;

(4) Shall allow the county, city, or town imposing the impact fees to adjust the standard impact fee at the time the fee is imposed to consider unusual circumstances in specific cases to ensure that impact fees are imposed fairly;

(5) Shall include a provision for calculating the amount of the fee to be imposed on a particular development that permits consideration of studies and data submitted by the developer to adjust the amount of the fee;

(6) Shall establish one or more reasonable service areas within which it shall calculate and impose impact fees for various land use categories per unit of development;

(7) May provide for the imposition of an impact fee for system improvement costs previously incurred by a county, city, or town to the extent that new growth and development will be served by the previously constructed improvements provided such fee shall not be imposed to make up for any system improvement deficiencies. [1990 1st ex.s. c 17 § 44.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

82.02.070 Impact fees—Retained in special accounts—Limitations on use—Administrative appeals. (1) Impact fee receipts shall be earmarked specifically and retained in special interest-bearing accounts. Separate accounts shall be established for each type of public facility for which impact fees are collected. All interest shall be retained in the account and expended for the purpose or purposes for which the impact fees were imposed. Annually, each county, city, or town imposing impact fees shall provide a report on each impact fee account showing the source and amount of all moneys collected, earned, or received and system improvements that were financed in whole or in part by impact fees.

(2) Impact fees for system improvements shall be expended only in conformance with the capital facilities plan element of the comprehensive plan.

(3) Impact fees shall be expended or encumbered for a permissible use within six years of receipt, unless there exists an extraordinary and compelling reason for fees to be held longer than six years. Such extraordinary or compelling reasons shall be identified in written findings by the governing body of the county, city, or town.

(4) Impact fees may be paid under protest in order to obtain a permit or other approval of development activity.

(5) Each county, city, or town that imposes impact fees shall provide for an administrative appeals process for the appeal of an impact fee; the process may follow the appeal process for the underlying development approval or the county, city, or town may establish a separate appeals process. The impact fee may be modified upon a determination that it is proper to do so based on principles of fairness. The county, city, or town may provide for the resolution of disputes regarding impact fees by arbitration. [1990 1st ex.s. c 17 § 46.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

82.02.080 Impact fees—Refunds. (1) The current owner of property on which an impact fee has been paid may receive a refund of such fees if the county, city, or town fails to expend or encumber the impact fees within six years of when the fees were paid or other such period of time established pursuant to RCW 82.02.070(3) on public facilities intended to benefit the development activity for which the impact fees were paid. In determining whether impact fees have been encumbered, impact fees shall be considered encumbered on a first in, first out basis. The county, city, or town shall notify potential claimants by first class mail deposited with the United States postal service at the last known address of claimants.

The request for a refund must be submitted to the county, city, or town governing body in writing within one year of the date the right to claim the refund arises or the date that notice is given, whichever is later. Any impact fees that are not expended within these time limitations, and for which no application for a refund has been made within this one-year period, shall be retained and expended on the indicated capital facilities. Refunds of impact fees under this subsection shall include interest earned on the impact fees.

(2) When a county, city, or town seeks to terminate any or all impact fee requirements, all unexpended or unencumbered funds, including interest earned, shall be refunded pursuant to this section. Upon the finding that any or all fee requirements are to be terminated, the county, city, or town shall place notice of such termination and the availability of refunds in a newspaper of general circulation at least two times and shall notify all potential claimants by first class mail to the last known address of claimants. All funds available for refund shall be retained for a period of one year. At the end of one year, any remaining funds shall be retained by the local government, but must be expended for the indicated public facilities. This notice requirement shall not apply if there are no unexpended or unencumbered balances within an account or accounts being terminated.

(3) A developer may request and shall receive a refund, including interest earned on the impact fees, when the developer does not proceed with the development activity and no impact has resulted. [1990 1st ex.s. c 17 § 47.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

82.02.090 Impact fees—Definitions. Unless the context clearly requires otherwise, the following definitions shall apply in RCW 82.02.050 through 82.02.090:

(1) "Development activity" means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any changes in the use of land, that creates additional demand and need for public facilities.

(2) "Development approval" means any written authorization from a county, city, or town which authorizes the commencement of development activity.

(3) "Impact fee" means a payment of money imposed upon development as a condition of development approval to pay for public facilities needed to serve new growth and development, and that is reasonably related to the new development that creates additional demand and need for public facilities, that is a proportionate share of the cost of the public facilities, and that is used for facilities that reasonably benefit the new development. "Impact fee" does not include a reasonable permit or application fee.

(4) "Owner" means the owner of record of real property, although when real property is being purchased under a real estate contract, the purchaser shall be considered the owner of the real property if the contract is recorded.

(5) "Proportionate share" means that portion of the cost of public facility improvements that are reasonably related to the service demands and needs of new development.

(6) "Project improvements" mean site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project, and are not system improvements. No improvement or facility included in a capital facilities plan approved by the governing body of the county, city, or town shall be considered a project improvement.

(7) "Public facilities" means the following capital facilities owned or operated by government entities: (a) Public streets and roads; (b) publicly owned parks, open space, and recreation facilities; (c) school facilities; and (d) fire protection facilities in jurisdictions that are not part of a fire district.

(8) "Service area" means a geographic area defined by a county, city, town, or intergovernmental agreement in which a defined set of public facilities provide service to development within the area. Service areas shall be designated on the basis of sound planning or engineering principles.

(9) "System improvements" mean public facilities that are included in the capital facilities plan and are designed to provide service to service areas within the community at large, in contrast to project improvements. [1990 1st ex.s. c 17 § 48.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Chapter 82.04

BUSINESS AND OCCUPATION TAX

Sections

82.04.2402	Tax not applicable to treatment or processing of effluent water—Expiration of section.
82.04.260	Tax on buyer and wholesaler of wheat, oats, dry peas, dry beans, lentils, triticale, corn, rye, and barley—Flour, pearl barley, and oil manufacturers—Seafood

products manufacturers—Fruit and vegetable processors—Research and development organizations—Perishable meat products processors and wholesalers—Nuclear fuel assemblies—Travel agents—Certain international activities—Stevedoring and associated activities—Low-level waste disposers—Insurance agents, brokers, and solicitors.

82.04.333	Exemptions—Small harvesters.
82.04.360	Exemptions.
82.04.366	Exemptions—Auctions by public benefit nonprofit organization.
82.04.434	Credit—Public safety standards and testing.

82.04.2402 Tax not applicable to treatment or processing of effluent water—Expiration of section. The tax imposed by RCW 82.04.240 shall not apply to the treatment or processing of effluent water purchased for commercial use directly from a sewage treatment facility operated by any county, city, town, political subdivision, or municipal or quasi-municipal corporation of this state. This section shall expire December 31, 1993, unless extended by the legislature. [1991 c 347 § 24.]

Purposes—1991 c 347: See note following RCW 90.42.005.

Severability—1991 c 347: See RCW 90.42.900.

82.04.260 Tax on buyer and wholesaler of wheat, oats, dry peas, dry beans, lentils, triticale, corn, rye, and barley—Flour, pearl barley, and oil manufacturers—Seafood products manufacturers—Fruit and vegetable processors—Research and development organizations—Perishable meat products processors and wholesalers—Nuclear fuel assemblies—Travel agents—Certain international activities—Stevedoring and associated activities—Low-level waste disposers—Insurance agents, brokers, and solicitors. (1) Upon every person engaging within this state in the business of buying wheat, oats, dry peas, dry beans, lentils, triticale, corn, rye and barley, but not including any manufactured or processed products thereof, and selling the same at wholesale; the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of one one-hundredth of one percent.

(2) Upon every person engaging within this state in the business of manufacturing wheat into flour, barley into pearl barley, soybeans into soybean oil, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business shall be equal to the value of the flour, pearl barley, or oil manufactured, multiplied by the rate of one-eighth of one percent.

(3) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business shall be equal to the value of the peas split or processed, multiplied by the rate of one-quarter of one percent.

(4) Upon every person engaging within this state in the business of manufacturing seafood products which remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured, multiplied by the rate of one-eighth of one percent.

(5) Upon every person engaging within this state in the business of manufacturing by canning, preserving, freezing or dehydrating fresh fruits and vegetables; as to such persons the amount of tax with respect to such business shall be equal to the value of the products canned, preserved, frozen or dehydrated multiplied by the rate of three-tenths of one percent.

(6) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of forty-four one-hundredths of one percent.

(7) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of twenty-five one-hundredths of one percent through June 30, 1986, and one-eighth of one percent thereafter.

(8) Upon every person engaging within this state in the business of making sales, at retail or wholesale, of nuclear fuel assemblies manufactured by that person, as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the assemblies multiplied by the rate of twenty-five one-hundredths of one percent.

(9) Upon every person engaging within this state in the business of manufacturing nuclear fuel assemblies, as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured multiplied by the rate of twenty-five one-hundredths of one percent.

(10) Upon every person engaging within this state in the business of acting as a travel agent; as to such persons the amount of the tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of twenty-five one-hundredths of one percent.

(11) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities shall be equal to the gross income derived from such activities multiplied by the rate of thirty-three one-hundredths of one percent.

(12) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds derived from such activities multiplied by the rate of thirty-three one hundredths of one percent. Persons subject to taxation under this subsection shall be exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their

business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(13) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business shall be equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of fifteen percent.

(a) The rate specified in this subsection shall be reduced to ten percent on May 20, 1991.

(b) The rate specified in this subsection shall be further reduced to five percent on January 1, 1992.

(c) The rate specified in this subsection shall be further reduced to three percent on July 1, 1993.

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state shall be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(14) Upon every person engaging within this state as an insurance agent, insurance broker, or insurance solicitor licensed under chapter 48.17 RCW; as to such persons, the amount of the tax with respect to such licensed activities shall be equal to the gross income of such business multiplied by the rate of one percent. [1991 c 272 § 15; 1990 c 21 § 2; 1987 c 139 § 1. Prior: 1985 c 471 § 1; 1985 c 135 § 2; 1983 2nd ex.s. c 3 § 5; prior: 1983 1st ex.s. c 66 § 4; 1983 1st ex.s. c 55 § 4; 1982 2nd ex.s. c 13 § 1; 1982 c 10 § 16; prior: 1981 c 178 § 1; 1981 c 172 § 3; 1979 ex.s. c 196 § 2; 1975 1st ex.s. c 291 § 7; 1971 ex.s. c 281 § 5; 1971 ex.s. c 186 § 3; 1969 ex.s. c 262 § 36; 1967 ex.s. c 149 § 10; 1965 ex.s. c 173 § 6; 1961 c 15 § 82.04.260; prior: 1959 c 211 § 2; 1955 c 389 § 46; prior: 1953 c 91 § 4; 1951 2nd ex.s. c 28 § 4; 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c

227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Effective dates—1991 c 272: See RCW 81.108.901.

Severability—1985 c 471: "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." [1985 c 471 § 17.]

Effective date—1985 c 471: "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 July 1, 1985." [1985 c 471 § 18.]

Construction—**Severability**—**Effective dates**—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Effective dates—1983 1st ex.s. c 55: See note following RCW 82.08.010.

Severability—1982 2nd ex.s. c 13: "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." [1982 2nd ex.s. c 13 § 2.]

Effective date—1982 2nd ex.s. c 13: "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 August 1, 1982." [1982 2nd ex.s. c 13 § 3.]

Severability—1982 c 10: See note following RCW 6.13.080.

Effective dates—1981 c 172: See note following RCW 82.04.240.

Effective date—1979 ex.s. c 196: See note following RCW 82.04.240.

Effective dates—**Severability**—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

Effective date—1971 ex.s. c 186: See note following RCW 82.04.110.

Low-level waste disposal rate regulation study: RCW 81.04.520.

82.04.333 Exemptions—Small harvesters. This chapter shall not apply to the gross receipts or value of products proceeding or accruing from timber harvested by a person who is a small harvester as defined in RCW 84.33.073 and whose value of products, gross proceeds of sales, or gross income of the business is less than one hundred thousand dollars per tax year. [1990 c 141 § 1.]

82.04.360 Exemptions. (1) This chapter shall not apply to any person in respect to his or her employment in the capacity of an employee or servant as distinguished from that of an independent contractor. For the purposes of this section, the definition of employee shall include those persons that are defined in section 3121(d)(3)(B) of the Internal Revenue Code of 1986, as amended through January 1, 1991.

(2) A booth renter, as defined by RCW 18.16.020, is an independent contractor for purposes of this chapter. [1991 c 324 § 19; 1991 c 275 § 2; 1961 c 15 § 82.04-.360. Prior: 1959 c 197 § 20; prior: 1945 c 249, § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

Reviser's note: This section was amended by 1991 c 275 § 2 and by 1991 c 324 § 19, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1991 c 324: See RCW 18.16.910.

Finding—Intent—1991 c 275: "(1) The legislature finds:

(a) The existing state policy is to exempt employees from the business and occupation tax.

(b) It has been difficult to distinguish, for business and occupation tax purposes, between independent contractors and employees who are in the business of selling life insurance. The tests commonly used by the department of revenue to determine tax status have not successfully differentiated employees from independent contractors when applied to the life insurance industry.

(2) The intent of this act is to apply federal tax law and rules to distinguish between employees and independent contractors for business and occupation tax purposes, solely for the unique business of selling life insurance." [1991 c 275 § 1.]

Effective date—1991 c 275: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 275 § 3.]

82.04.366 Exemptions—Auctions by public benefit nonprofit organization. (1) This chapter does not apply to amounts received by a public benefit nonprofit organization from sales at an auction that the organization conducts or participates in, if:

(a) The organization does not conduct or participate in more than one auction per year; and

(b) The auction does not extend over a period of more than two days.

(2) As used in this section, "public benefit nonprofit organization" means an organization exempt from tax under section 501(c)(3) of the federal internal revenue code, as in effect on January 1, 1991, or a subsequent date provided by the director by rule consistent with the purpose of this section. [1991 c 51 § 1.]

82.04.434 Credit—Public safety standards and testing. (1) There may be credited against the tax imposed by this chapter, the value of services and information relating to setting of standards and testing for public safety provided to the state of Washington, without charge, at the state's request, by a nonprofit corporation that is:

(a) Organized and operated for the purpose of setting standards and testing for public safety; and

(b) Exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and

(c) Organized with no direct or indirect industry affiliation.

(2) The value of the services and information requested by the state and provided to the state, without charge, shall be determined by the allocation of the cost method using generally accepted accounting standards.

(3) The credit allowed under this section shall be limited to the amount of tax imposed by this chapter. Any unused excess credit in a reporting period may be carried forward to future reporting periods for a maximum of one year. [1991 c 13 § 1.]

Effective date—1991 c 13: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 13 § 2.]

Chapter 82.08
RETAIL SALES TAX

Sections

82.08.0283	Exemptions—Sales of insulin, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen.
82.08.0290	Exemptions—Auctions by public benefit nonprofit organization.
82.08.065	Collection of tax and fee on mobile homes by county auditors or director of licensing—Remittance.
82.08.180	Apportionment and distribution from liquor excise tax fund—Withholding for noncompliance.

82.08.0283 Exemptions—Sales of insulin, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen. The tax levied by RCW 82.08.020 shall not apply to sales of insulin; prosthetic and orthotic devices prescribed for an individual by a person licensed under chapters 18.25, 18.57, or 18.71 RCW or dispensed or fitted by a person licensed under chapter 18.35 RCW; ostomic items; and medically prescribed oxygen. For the purposes of this section, "medically prescribed oxygen" includes, but is not limited to, sale or rental of oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems to an individual under a prescription issued by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual. [1991 c 250 § 2; 1986 c 255 § 1; 1980 c 86 § 1; 1980 c 37 § 48. Formerly RCW 82.08.030(30).]

Finding—Intent—1991 c 250: "(1) The legislature finds:

(a) The existing state policy is to exempt medical oxygen from sales and use tax.

(b) The technology for supplying medical oxygen has changed substantially in recent years. Many consumers of medical oxygen purchase or rent equipment that supplies oxygen rather than purchasing oxygen in gaseous form.

(2) The intent of this act is to bring sales and rental of individual oxygen systems within the existing exemption for medical oxygen, without expanding the essence of the original policy decision that medical oxygen should be exempt from sales and use tax." [1991 c 250 § 1.]

Effective date—1986 c 255: "This act shall take effect July 1, 1986." [1986 c 255 § 3.]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0290 Exemptions—Auctions by public benefit nonprofit organization. (1) The tax levied by RCW 82.08.020 does not apply to sales made by a public benefit nonprofit organization at an auction that the organization conducts or participates in, if:

(a) The organization does not conduct or participate in more than one auction per year; and

(b) The auction does not extend over a period of more than two days.

(2) As used in this section, "public benefit nonprofit organization" means an organization exempt from tax under section 501(c)(3) of the federal internal revenue code, as in effect on January 1, 1991, or a subsequent date provided by the director by rule consistent with the purpose of this section. [1991 c 51 § 2.]

82.08.065 Collection of tax and fee on mobile homes by county auditors or director of licensing—Remittance. In the collection of the sales tax on mobile homes, the department of revenue may designate the county auditors of the several counties of the state as its collecting agents. Upon such designation, it shall be the duty of each county auditor to collect the tax and the fee at the time the mobile home dealer or selling agent applies for a new certificate of ownership for such mobile home in the instance where transfer of ownership was from a mobile home dealer or person deemed a selling agent under RCW 82.04.480, except where the applicant presents a written statement signed by the department of revenue or its duly authorized agent showing that no retail sales tax or use tax is legally due. The term "mobile home" as used in this section means a mobile home as defined in RCW 46.04.302. It shall be the duty of every mobile home dealer or selling agent to declare upon the application for a new certificate of ownership the selling price paid for the mobile home. Any person willfully misrepresenting, or failing or refusing to declare upon the application, such selling price shall be guilty of a gross misdemeanor.

Each county auditor who acts as agent of the department of revenue shall at the time of remitting license fee receipts on motor vehicles subject to the provisions of RCW 82.12.045 pay over and account to the state treasurer for all sales tax revenue collected under this section, after first deducting as his or her collection fee the sum of two dollars for each mobile home upon which the tax has been collected.

Any applicant who has paid sales tax to a county auditor under this section may apply to the department of revenue for refund thereof if he has reason to believe that such tax was not legally due and owing. No refund is allowed unless application therefor is received by the department of revenue within four years after payment of the tax. Upon receipt of an application for refund the department of revenue shall consider the same and issue its order either granting or denying it and if refund is denied the taxpayer shall have the right of appeal as provided in RCW 82.32.170, 82.32.180, and 82.32.190.

The provisions of this section shall be construed as cumulative of other methods prescribed in chapters 82.04 to 82.32 RCW, inclusive, for the collection of the tax imposed by this chapter. The department of revenue shall have power to adopt such rules as may be necessary to administer the provisions of this section. Any duties required by this section to be performed by the county auditor may be performed by the director of licensing but no collection fee shall be deductible by the director of licensing in remitting sales tax revenue to the state treasurer. [1991 c 327 § 5; 1990 c 171 § 8; 1987 c 89 § 1.]

Construction—Severability—Effective date—1991 c 327: See RCW 59.21.901 through 59.21.903.

Effective date—1990 c 171 §§ 6, 7, 8: See note following RCW 59.21.060.

82.08.180 Apportionment and distribution from liquor excise tax fund—Withholding for noncompliance.

The governor may notify and direct the state treasurer to withhold the revenues to which the counties, cities, and towns are entitled under RCW 82.08.170 if the counties, cities, or towns are found to be in noncompliance pursuant to RCW 36.70A.340. [1991 1st sp.s. c 32 § 36.]

Section headings not law—1991 1st sp.s. c 32: See RCW 36.70A.902.

Chapter 82.12 USE TAX

Sections

- 82.12.0277 Exemptions—Use of insulin, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen.
82.12.0299 Exemptions—Use of treated or processed effluent water—Expiration of section.

82.12.0277 Exemptions—Use of insulin, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen. The provisions of this chapter shall not apply in respect to the use of insulin; prosthetic and orthotic devices prescribed for an individual by a person licensed under chapters 18.25, 18.57, or 18.71 RCW or dispensed or fitted by a person licensed under chapter 18.35 RCW; ostomic items; and medically prescribed oxygen. For the purposes of this section, "medically prescribed oxygen" includes, but is not limited to, sale or rental of oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems to an individual under a prescription issued by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual. [1991 c 250 § 3; 1986 c 255 § 2; 1980 c 86 § 2; 1980 c 37 § 75. Formerly RCW 82.12.030(25).]

Finding—Intent—1991 c 250: See note following RCW 82.08.0283.

Effective date—1986 c 255: See note following RCW 82.08.0283.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0299 Exemptions—Use of treated or processed effluent water—Expiration of section. This chapter shall not apply with respect to the use of treated or processed effluent water purchased for commercial use directly from a sewage treatment facility operated by any county, city, town, political subdivision, or municipal or quasi-municipal corporation of this state. This section shall expire December 31, 1993, unless extended by the legislature. [1991 c 347 § 26.]

Purposes—1991 c 347: See note following RCW 90.42.005.

Severability—1991 c 347: See RCW 90.42.900.

Chapter 82.14 COUNTIES, CITIES AND METROPOLITAN MUNICIPAL CORPORATIONS—RETAIL SALES AND USE TAXES

Sections

- 82.14.045 Sales and use taxes for public transportation systems.

- 82.14.048 Sales and use taxes for public facilities districts.
82.14.050 Administration and collection—Local sales and use tax account.
82.14.060 Distributions to counties, cities, transportation authorities, and public facilities districts—Imposition at excess rates, effect.
82.14.200 County sales and use tax equalization account—Allocation procedure.
82.14.210 Municipal sales and use tax equalization account—Allocation procedure.
82.14.215 Apportionment and distribution—Withholding revenue for noncompliance.
82.14.300 Local government criminal fiscal assistance—Finding and intent.
82.14.301 Task force on city and county finances—Expiration of section.
82.14.310 County criminal justice assistance account—Distributions based on crime rate—Expiration of section.
82.14.315 Expired.
82.14.320 Municipal criminal justice assistance account—Distributions based on crime rate—Expiration of section.
82.14.330 Municipal criminal justice assistance account—Distributions based on population—Expiration of section.
82.14.340 Additional sales and use tax for criminal justice purposes—Expiration of section.

82.14.045 Sales and use taxes for public transportation systems. (1) The legislative body of any city pursuant to RCW 35.92.060, of any county which has created an unincorporated transportation benefit area pursuant to RCW 36.57.100 and 36.57.110, of any public transportation benefit area pursuant to RCW 36.57A.080 and 36.57A.090, of any county transportation authority established pursuant to chapter 36.57 RCW, and of any metropolitan municipal corporation within a county with a population of one million or more pursuant to chapter 35.58 RCW, may, by resolution or ordinance for the sole purpose of providing funds for the operation, maintenance, or capital needs of public transportation systems and in lieu of the excise taxes authorized by RCW 35.95.040, submit an authorizing proposition to the voters or include such authorization in a proposition to perform the function of public transportation and if approved by a majority of persons voting thereon, fix and impose a sales and use tax in accordance with the terms of this chapter: PROVIDED, That no such legislative body shall impose such a sales and use tax without submitting such an authorizing proposition to the voters and obtaining the approval of a majority of persons voting thereon: PROVIDED FURTHER, That where such a proposition is submitted by a county on behalf of an unincorporated transportation benefit area, it shall be voted upon by the voters residing within the boundaries of such unincorporated transportation benefit area and, if approved, the sales and use tax shall be imposed only within such area. Notwithstanding any provisions of this section to the contrary, any county in which a county public transportation plan has been adopted pursuant to RCW 36.57.070 and the voters of such county have authorized the imposition of a sales and use tax pursuant to the provisions of section 10, chapter 167, Laws of 1974 ex. sess., prior to July 1, 1975, shall be authorized to fix and impose a sales and use tax as provided in this section at not to exceed the rate so authorized without

additional approval of the voters of such county as otherwise required by this section.

The tax authorized pursuant to this section shall be in addition to the tax authorized by RCW 82.14.030 and shall be collected from those persons who are taxable by the state pursuant to chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within such city, public transportation benefit area, county, or metropolitan municipal corporation as the case may be. The rate of such tax shall be one-tenth, two-tenths, three-tenths, four-tenths, five-tenths, or six-tenths of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax). The rate of such tax shall not exceed the rate authorized by the voters unless such increase shall be similarly approved.

(2)(a) In the event a metropolitan municipal corporation shall impose a sales and use tax pursuant to this chapter no city, county which has created an unincorporated transportation benefit area, public transportation benefit area authority, or county transportation authority wholly within such metropolitan municipal corporation shall be empowered to levy and/or collect taxes pursuant to RCW 35.58.273, 35.95.040, and/or 82.14.045, but nothing herein shall prevent such city or county from imposing sales and use taxes pursuant to any other authorization.

(b) In the event a county transportation authority shall impose a sales and use tax pursuant to this section, no city, county which has created an unincorporated transportation benefit area, public transportation benefit area, or metropolitan municipal corporation, located within the territory of the authority, shall be empowered to levy or collect taxes pursuant to RCW 35.58.273, 35.95.040, or 82.14.045.

(c) In the event a public transportation benefit area shall impose a sales and use tax pursuant to this section, no city, county which has created an unincorporated transportation benefit area, or metropolitan municipal corporation, located wholly or partly within the territory of the public transportation benefit area, shall be empowered to levy or collect taxes pursuant to RCW 35.58.273, 35.95.040, or 82.14.045.

(3) Any local sales and use tax revenue collected pursuant to this section by any city or by any county for transportation purposes pursuant to RCW 36.57.100 and 36.57.110 shall not be counted as locally generated tax revenues for the purposes of apportionment and distribution, in the manner prescribed by chapter 82.44 RCW, of the proceeds of the motor vehicle excise tax authorized pursuant to RCW 35.58.273. [1991 c 363 § 158. Prior: 1984 c 112 § 1; 1983 c 3 § 216; 1980 c 163 § 1; 1975 1st ex.s. c 270 § 6; 1971 ex.s. c 296 § 2.]

Purpose—**Captions now law**—1991 c 363: See notes following RCW 2.32.180.

Severability—**Effective date**—1975 1st ex.s. c 270: See notes following RCW 35.58.272.

Legislative finding, declaration—1971 ex.s. c 296: "The legislature finds that adequate public transportation systems are necessary to the economic, industrial and cultural development of the urban areas of this state and the health, welfare and prosperity of persons who reside or are employed in such areas or who engage in business therein and

such systems are increasingly essential to the functioning of the urban highways of the state. The legislature further finds and declares that fares and tolls for the use of public transportation systems cannot maintain such systems in solvent financial conditions and at the same time meet the need to serve those who cannot reasonably afford or use other forms of transportation. The legislature further finds and declares that additional and alternate means of financing adequate public transportation service are necessary for the cities, metropolitan municipal corporations and counties of this state which provide such service." [1971 ex.s. c 296 § 1.]

Severability—1971 ex.s. c 296: "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 provision to other persons or circumstances is not affected." [1971 ex.s. c 296 § 5.]

82.14.048 Sales and use taxes for public facilities districts. The governing board of a public facilities district under chapter 36.100 RCW may submit an authorizing proposition to the voters of the district, and if the proposition is approved by a majority of persons voting, fix and impose a sales and use tax in accordance with the terms of this chapter.

The tax authorized in this section shall be in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the public facilities district. The rate of tax shall equal one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

Moneys received from any tax imposed under this section shall be used for the purpose of providing funds for the costs associated with the financing, design, acquisition, construction, equipping, operating, maintaining, and reequipping of sports or entertainment facilities and contiguous parking. [1991 c 207 § 1.]

82.14.050 Administration and collection—Local sales and use tax account. The counties, cities, and transportation authorities under RCW 82.14.045 and public facilities districts under chapter 36.100 RCW shall contract, prior to the effective date of a resolution or ordinance imposing a sales and use tax, the administration and collection to the state department of revenue, which shall deduct a percentage amount, as provided by contract, not to exceed two percent of the taxes collected for administration and collection expenses incurred by the department. The remainder of any portion of any tax authorized by this chapter which is collected by the department of revenue shall be deposited by the state department of revenue in the local sales and use tax account hereby created in the state treasury. Moneys in the local sales and use tax account may be spent only for distribution to counties, cities, transportation authorities, and public facilities districts imposing a sales and use tax. All administrative provisions in chapters 82.03, 82.08, 82.12, and 82.32 RCW, as they now exist or may hereafter be amended, shall, insofar as they are applicable to state sales and use taxes, be applicable to taxes imposed pursuant to this chapter. Except as provided in RCW 43.08.190, all earnings of investments of balances in the local sales and use tax account shall be credited to the local sales and use tax account and distributed to the

counties, cities, transportation authorities, and public facilities districts monthly. [1991 1st sp.s. c 13 § 34; 1991 c 207 § 2; 1990 2nd ex.s. c 1 § 201; 1985 c 57 § 81; 1981 2nd ex.s. c 4 § 10; 1971 ex.s. c 296 § 3; 1970 ex.s. c 94 § 6.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Applicability—1990 2nd ex.s. c 1 §§ 201–204: "Sections 201 through 204 of this act shall not be effective for earnings on balances prior to July 1, 1990, regardless of when a distribution is made." [1990 2nd ex.s. c 1 § 205.]

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

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

Severability—1981 2nd ex.s. c 4: See note following RCW 43.85.130.

Legislative finding, declaration—Severability—1971 ex.s. c 296: See notes following RCW 82.14.045.

82.14.060 Distributions to counties, cities, transportation authorities, and public facilities districts—Imposition at excess rates, effect. Monthly the state treasurer shall make distribution from the local sales and use tax account to the counties, cities, transportation authorities, and public facilities districts the amount of tax collected on behalf of each taxing authority, less the deduction provided for in RCW 82.14.050. The state treasurer shall make the distribution under this section without appropriation.

In the event that any ordinance or resolution imposes a sales and use tax at a rate in excess of the applicable limits contained herein, such ordinance or resolution shall not be considered void in toto, but only with respect to that portion of the rate which is in excess of the applicable limits contained herein. [1991 c 207 § 3; 1990 2nd ex.s. c 1 § 202; 1981 2nd ex.s. c 4 § 11; 1971 ex.s. c 296 § 4; 1970 ex.s. c 94 § 7.]

Applicability—1990 2nd ex.s. c 1: See note following RCW 82.14.050.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Severability—1981 2nd ex.s. c 4: See note following RCW 43.85.130.

Legislative finding, declaration—Severability—1971 ex.s. c 296: See notes following RCW 82.14.045.

82.14.200 County sales and use tax equalization account—Allocation procedure. There is created in the state treasury a special account to be known as the "county sales and use tax equalization account." Into this account shall be placed a portion of all motor vehicle excise tax receipts as provided in RCW 82.44.110(1)(f). Funds in this account shall be allocated by the state treasurer according to the following procedure:

(1) Prior to April 1st of each year the director of revenue shall inform the state treasurer of the total and the per capita levels of revenues for the unincorporated area of each county and the state-wide weighted average per capita level of revenues for the unincorporated areas of all counties imposing the sales and use tax authorized under RCW 82.14.030(1) for the previous calendar year.

(2) At such times as distributions are made under RCW 82.44.150, as now or hereafter amended, the state treasurer shall apportion to each county imposing the sales and use tax under RCW 82.14.030(1) at the maximum rate and receiving less than one hundred fifty thousand dollars from the tax for the previous calendar year, an amount from the county sales and use tax equalization account sufficient, when added to the amount of revenues received the previous calendar year by the county, to equal one hundred fifty thousand dollars.

The department of revenue shall establish a governmental price index as provided in this subsection. The base year for the index shall be the end of the third quarter of 1982. Prior to November 1, 1983, and prior to each November 1st thereafter, the department of revenue shall establish another index figure for the third quarter of that year. The department of revenue may use the implicit price deflators for state and local government purchases of goods and services calculated by the United States department of commerce to establish the governmental price index. Beginning on January 1, 1984, and each January 1st thereafter, the one hundred fifty thousand dollar base figure in this subsection shall be adjusted in direct proportion to the percentage change in the governmental price index from 1982 until the year before the adjustment. Distributions made under this subsection for 1984 and thereafter shall use this adjusted base amount figure.

(3) Subsequent to the distributions under subsection (2) of this section and at such times as distributions are made under RCW 82.44.150, as now or hereafter amended, the state treasurer shall apportion to each county imposing the sales and use tax under RCW 82.14.030(1) at the maximum rate and receiving less than seventy percent of the state-wide weighted average per capita level of revenues for the unincorporated areas of all counties as determined by the department of revenue under subsection (1) of this section, an amount from the county sales and use tax equalization account sufficient, when added to the per capita level of revenues for the unincorporated area received the previous calendar year by the county, to equal seventy percent of the state-wide weighted average per capita level of revenues for the unincorporated areas of all counties determined under subsection (1) of this section, subject to reduction under subsections (6) and (7) of this section. When computing distributions under this section, any distribution under subsection (2) of this section shall be considered revenues received from the tax imposed under RCW 82.14.030(1) for the previous calendar year.

(4) Subsequent to the distributions under subsection (3) of this section and at such times as distributions are made under RCW 82.44.150, as now or hereafter amended, the state treasurer shall apportion to each county imposing the sales and use tax under RCW 82.14.030(2) at the maximum rate and receiving a distribution under subsection (2) of this section, a third distribution from the county sales and use tax equalization account. The distribution to each qualifying county shall be equal to the distribution to the county under

subsection (2) of this section, subject to the reduction under subsections (6) and (7) of this section. To qualify for the total distribution under this subsection, the county must impose the tax under RCW 82.14.030(2) for the entire calendar year. Counties imposing the tax for less than the full year shall qualify for prorated allocations under this subsection proportionate to the number of months of the year during which the tax is imposed.

(5) Subsequent to the distributions under subsection (4) of this section and at such times as distributions are made under RCW 82.44.150, as now or hereafter amended, the state treasurer shall apportion to each county imposing the sales and use tax under RCW 82.14.030(2) at the maximum rate and receiving a distribution under subsection (3) of this section, a fourth distribution from the county sales and use tax equalization account. The distribution to each qualifying county shall be equal to the distribution to the county under subsection (3) of this section, subject to the reduction under subsections (6) and (7) of this section. To qualify for the distributions under this subsection, the county must impose the tax under RCW 82.14.030(2) for the entire calendar year. Counties imposing the tax for less than the full year shall qualify for prorated allocations under this subsection proportionate to the number of months of the year during which the tax is imposed.

(6) Revenues distributed under this section in any calendar year shall not exceed an amount equal to seventy percent of the state-wide weighted average per capita level of revenues for the unincorporated areas of all counties during the previous calendar year. If distributions under subsections (3) through (5) of this section cannot be made because of this limitation, then distributions under subsections (3) through (5) of this section shall be reduced ratably among the qualifying counties.

(7) If inadequate revenues exist in the county sales and use tax equalization account to make the distributions under subsections (3) through (5) of this section, then the distributions under subsections (3) through (5) of this section shall be reduced ratably among the qualifying counties. At such time during the year as additional funds accrue to the county sales and use tax equalization account, additional distributions shall be made under subsections (3) through (5) of this section to the counties.

(8) If the level of revenues in the county sales and use tax equalization account exceeds the amount necessary to make the distributions under subsections (2) through (5) of this section, then the additional revenues shall be credited and transferred to the state general fund. [1991 1st sp.s. c 13 § 15; 1990 c 42 § 313; 1985 c 57 § 82; 1984 c 225 § 5; 1983 c 99 § 1; 1982 1st ex.s. c 49 § 21.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

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

Rules—1984 c 225: See note following RCW 82.14.210.

Severability—1983 c 99: "If any provision of this act or chapter 49, Laws of 1982 1st ex. sess. or their application to any person or circumstance is held invalid, the remainder of these acts or the application of the provision to other persons or circumstances is not affected." [1983 c 99 § 10.]

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

82.14.210 Municipal sales and use tax equalization account—Allocation procedure. There is created in the state treasury a special account to be known as the "municipal sales and use tax equalization account." Into this account shall be placed such revenues as are provided under RCW 82.44.110(1)(e). Funds in this account shall be allocated by the state treasurer according to the following procedure:

(1) Prior to January 1st of each year the department of revenue shall determine the total and the per capita levels of revenues for each city and the state-wide weighted average per capita level of revenues for all cities imposing the sales and use tax authorized under RCW 82.14.030(1) for the previous calendar year.

(2) At such times as distributions are made under RCW 82.44.150, the state treasurer shall apportion to each city not imposing the sales and use tax under RCW 82.14.030(2) an amount from the municipal sales and use tax equalization account equal to the amount distributed to the city under RCW 82.44.155, multiplied by thirty-five sixty-fifths.

(3) Subsequent to the distributions under subsection (2) of this section, and at such times as distributions are made under RCW 82.44.150, the state treasurer shall apportion to each city imposing the sales and use tax under RCW 82.14.030(1) at the maximum rate and receiving less than seventy percent of the state-wide weighted average per capita level of revenues for all cities as determined by the department of revenue under subsection (1) of this section, an amount from the municipal sales and use tax equalization account sufficient, when added to the per capita level of revenues received the previous calendar year by the city, to equal seventy percent of the state-wide weighted average per capita level of revenues for all cities determined under subsection (1) of this section, subject to reduction under subsection (6) of this section.

(4) Subsequent to the distributions under subsection (3) of this section, and at such times as distributions are made under RCW 82.44.150, the state treasurer shall apportion to each city imposing the sales and use tax under RCW 82.14.030(2) at the maximum rate and receiving a distribution under subsection (3) of this section, a third distribution from the municipal sales and use tax equalization account. The distribution to each qualifying city shall be equal to the distribution to the city under subsection (3) of this section, subject to the reduction under subsection (6) of this section. To qualify for the distributions under this subsection, the city must impose the tax under RCW 82.14.030(2) for the entire calendar year. Cities imposing the tax for less than the full year shall qualify for prorated allocations under this subsection proportionate to the number of months of the year during which the tax is imposed.

(5) For a city with an official incorporation date after January 1, 1990, municipal sales and use tax equalization distributions shall be made according to the procedures in this subsection. Municipal sales and use tax equalization distributions to eligible new cities shall be made at the same time as distributions are made under subsections (3) and (4) of this section. The department of revenue shall follow the estimating procedures outlined in this subsection until the new city has received a full year's worth of revenues under RCW 82.14.030(1) as of the January municipal sales and use tax equalization distribution.

(a) Whether a newly incorporated city determined to receive funds under this subsection receives its first equalization payment at the January, April, July, or October municipal sales and use tax equalization distribution shall depend on the date the city first imposes the tax authorized under RCW 82.14.030(1).

(i) A newly incorporated city imposing the tax authorized under RCW 82.14.030(1) effective as of January 1st shall be eligible to receive funds under this subsection beginning with the April municipal sales and use tax equalization distribution of that year.

(ii) A newly incorporated city imposing the tax authorized under RCW 82.14.030(1) effective as of February 1st, March 1st, or April 1st shall be eligible to receive funds under this subsection beginning with the July municipal sales and use tax equalization distribution of that year.

(iii) A newly incorporated city imposing the tax authorized under RCW 82.14.030(1) effective as of May 1st, June 1st, or July 1st shall be eligible to receive funds under this subsection beginning with the October municipal sales and use tax equalization distribution of that year.

(iv) A newly incorporated city imposing the tax authorized under RCW 82.14.030(1) effective as of August 1st, September 1st, or October 1st shall be eligible to receive funds under this subsection beginning with the January municipal sales and use tax equalization distribution of the next year.

(v) A newly incorporated city imposing the tax authorized under RCW 82.14.030(1) effective as of November 1st or December 1st shall be eligible to receive funds under this subsection beginning with the April municipal sales and use tax equalization distribution of the next year.

(b) For purposes of calculating the amount of funds the new city should receive under this subsection, the department of revenue shall:

(i) Estimate the per capita amount of revenues from the tax authorized under RCW 82.14.030(1) that the new city would have received had the city received revenues from the tax the entire calendar year;

(ii) Calculate the amount provided under subsection (3) of this section based on the per capita revenues determined under (b)(i) of this subsection;

(iii) Prorate the amount determined under (b)(ii) of this subsection by the number of months the tax authorized under RCW 82.14.030(1) is imposed.

(c) A new city imposing the tax under RCW 82.14.030(2) at the maximum rate and receiving a distribution calculated under (b) of this subsection shall receive another distribution from the municipal sales and use tax equalization account. This distribution shall be equal to the calculation made under (b)(ii) of this subsection, prorated by the number of months the city imposes the tax authorized under RCW 82.14.030(2) at the full rate.

(d) The department of revenue shall advise the state treasurer of the amounts calculated under (b) and (c) of this subsection and the state treasurer shall distribute these amounts to the new city from the municipal sales and use tax equalization account subject to the limitations imposed in subsection (6) of this section.

(e) Revenues estimated under this subsection shall not affect the calculation of the state-wide weighted average per capita level of revenues for all cities made under subsection (1) of this section.

(6) If inadequate revenues exist in the municipal sales and use tax equalization account to make the distributions under subsection (3), (4), or (5) of this section, then the distributions under subsections (3), (4), and (5) of this section shall be reduced ratably among the qualifying cities. At such time during the year as additional funds accrue to the municipal sales and use tax equalization account, additional distributions shall be made under subsections (3), (4), and (5) of this section to the cities.

(7) If the level of revenues in the municipal sales and use tax equalization account exceeds the amount necessary to make the distributions under subsections (2) through (5) of this section, then the additional revenues shall be apportioned among the several cities within the state ratably on the basis of population as last determined by the office of financial management: PROVIDED, That no such distribution shall be made to those cities receiving a distribution under subsection (2) of this section. [1991 1st sp.s. c 13 § 16; 1990 2nd ex.s. c 1 § 701; 1990 c 42 § 314; 1985 c 57 § 83; 1984 c 225 § 2; 1982 1st ex.s. c 49 § 22.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Effective dates—1990 2nd ex.s. c 1: See note following RCW 84.52.010.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

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

Intent—1984 c 225: "It is the intent of the legislature to provide for the allocation of moneys by the department of revenue from the municipal sales and use tax equalization account to cities and towns initially incorporated on or after January 1, 1983." [1984 c 225 § 1.]

Applicability—1984 c 225: "Sections 1 and 2 of this act apply to distributions for calendar year 1984 and thereafter which are made to cities and towns that were initially incorporated on or after January 1, 1983, and that impose the tax authorized by RCW 82.14.030(1)." [1984 c 225 § 3.] "Sections 1 and 2 of this act" consist of the intent section footnoted above and the 1984 c 225 amendment to RCW 82.14.210.

Rules—1984 c 225: "The department of revenue shall adopt rules as necessary to implement this act." [1984 c 225 § 7.]

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

82.14.215 Apportionment and distribution—Withholding revenue for noncompliance. The governor may notify and direct the state treasurer to withhold the revenues to which the county or city is entitled under this chapter if a county or city is found to be in non-compliance pursuant to RCW 36.70A.340. [1991 1st sp.s. c 32 § 35.]

Section headings not law—1991 1st sp.s. c 32: See RCW 36.70A.902.

82.14.300 Local government criminal fiscal assistance—Finding and intent. The legislature finds and declares that local government criminal justice systems are in need of assistance. Many counties and cities are unable to provide sufficient funding for additional police protection, mitigation of congested court systems, and relief of overcrowded jails.

In order to ensure public safety, it is necessary to provide fiscal assistance to help local governments to respond immediately to these criminal justice problems, while initiating a review of the criminal justice needs of cities and counties and the resources available to address those needs.

To provide for a more efficient and effective response to these problems, the legislature encourages cities and counties to coordinate strategies against crime and use multijurisdictional and innovative approaches in addressing criminal justice problems.

The legislature intends to provide fiscal assistance to counties and cities in the manner provided in *this act until the report of the task force created under RCW 82.14.301 is available for consideration by the legislature. [1990 2nd ex.s. c 1 § 1.]

***Reviser's note:** For translation of "this act" see Codification Tables, Supplement Volume 9A.

Severability—1990 2nd ex.s. c 1: "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." [1990 2nd ex.s. c 1 § 1104.]

82.14.301 Task force on city and county finances—Expiration of section. (1) A task force on city and county finances is established, to consist of:

(a) Five members of the senate, with no more than three members from the majority caucus, to be appointed by the president of the senate;

(b) Five members of the house of representatives, with no more than three members from the majority caucus, to be appointed by the speaker of the house of representatives;

(c) Two nonvoting representatives of the governor, to be appointed by the governor.

(2) The task force shall examine and make recommendations on the following subjects:

(a) The need for additional fiscal assistance to cities and counties, including the local criminal justice system such as law enforcement agencies, the courts, indigent defense, and county jails;

(b) The adequacy of city and county revenues, including direct and indirect state assistance, local revenue and debt capacity, and local option taxes;

(c) Statutory or administrative changes that will promote efficiencies in local government, including the multijurisdictional coordination of services; and

(d) Revisions to RCW 43.135.060 (Initiative 62).

(3) In conducting its business, the task force shall seek the cooperation and participation of appropriate state agencies, legislative committees, and organizations representing city and county governments and officials. The task force shall coordinate its work with, and not duplicate, the efforts of other legislative task forces and select committees.

(4) By September 1, 1992, the task force shall submit a report, including its findings and recommendations, to the governor and appropriate committees of the legislature.

(5) Administrative and staff support of the task force shall be provided by the senate and house of representatives.

(6)(a) The sum of fifty thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the general fund to the senate for the purposes of this section.

(b) The sum of fifty thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the general fund to the house of representatives for the purposes of this section.

(7) This section expires on December 31, 1992. [1990 2nd ex.s. c 1 § 1001.]

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

82.14.310 County criminal justice assistance account—Distributions based on crime rate—Expiration of section. (1) The county criminal justice assistance account is created in the state treasury. The account shall consist of all motor vehicle excise tax receipts deposited into the account under chapter 82.44 RCW.

(2) The moneys deposited in the county criminal justice assistance account for distribution under this section shall be distributed at such times as distributions are made under RCW 82.44.150 and on the relative basis of each county's funding factor as determined under this subsection.

(a) A county's funding factor is the sum of:

(i) The population of the county, divided by one thousand, and multiplied by two-tenths;

(ii) The crime rate of the county, multiplied by three-tenths; and

(iii) The annual number of criminal cases filed in the county superior court, for each one thousand in population, multiplied by five-tenths.

(b) Under this section and RCW 82.14.320 and 82.14.330:

(i) The population of the county or city shall be as last determined by the office of financial management;

(ii) The crime rate of the county or city is the annual occurrence of specified criminal offenses, as calculated in the most recent annual report on crime in Washington state as published by the Washington association of sheriffs and police chiefs, for each one thousand in population;

(iii) The annual number of criminal cases filed in the county superior court shall be determined by the most recent annual report of the courts of Washington, as published by the office of the administrator for the courts.

(iv) Distributions and eligibility for distributions in the 1989–91 biennium shall be based on 1988 figures for both the crime rate as described under (ii) of this subsection and the annual number of criminal cases that are filed as described under (iii) of this subsection. Future distributions shall be based on the most recent figures for both the crime rate as described under (ii) of this subsection and the annual number of criminal cases that are filed as described under (iii) of this subsection.

(3) Moneys distributed under this section shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

(4) This section expires January 1, 1994. [1991 c 311 § 1; 1990 2nd ex.s. c 1 § 102.]

Severability—1991 c 311: "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." [1991 c 311 § 8.]

Effective dates—1990 2nd ex.s. c 1: See note following RCW 84.52.010.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

82.14.315 Expired. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

82.14.320 Municipal criminal justice assistance account—Distributions based on crime rate—Expiration of section. (1) The municipal criminal justice assistance account is created in the state treasury. The account shall consist of all motor vehicle excise tax receipts deposited into the account under chapter 82.44 RCW.

(2) No city may receive a distribution under this section from the municipal criminal justice assistance account unless:

(a) The city has a crime rate in excess of one hundred twenty-five percent of the state-wide average as calculated in the most recent annual report on crime in Washington state as published by the Washington association of sheriffs and police chiefs;

(b) The city has levied the tax authorized in RCW 82.14.030(2) at the maximum rate or the tax authorized in RCW 82.46.010(2) at the maximum rate; and

(c) The city has a per capita yield from the tax imposed under RCW 82.14.030(1) at the maximum rate of less than one hundred fifty percent of the state-wide average per capita yield for all cities from such local sales and use tax.

(3) The moneys deposited in the municipal criminal justice assistance account for distribution under this section shall be distributed at such times as distributions are made under RCW 82.44.150. The distributions shall be made as follows:

(a) Thirty percent of the moneys shall be distributed ratably based on population as last determined by the office of financial management to those cities eligible under subsection (2) of this section that have a crime rate determined under subsection (2)(a) of this section which is greater than two times the state-wide average crime rate. No city may receive more than fifty percent of any moneys distributed under this subsection (a).

(b) The remainder of the moneys shall be distributed to all cities eligible under subsection (2) of this section ratably based on population as last determined by the office of financial management.

(4) No city may receive more than thirty percent of all moneys distributed under subsection (3) of this section.

(5) Moneys distributed under this section shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

(6) This section expires January 1, 1994. [1991 1st sp.s. c 26 § 1; 1991 1st sp.s. c 13 § 30; 1990 2nd ex.s. c 1 § 104.]

Reviser's note: This section was amended by 1991 1st sp.s. c 13 § 30 and by 1991 1st sp.s. c 26 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Retroactive application—1991 1st sp.s. c 26: "The changes contained in section 1, chapter 26, Laws of 1991 1st sp. sess. are remedial, curative, and clarify ambiguities in prior existing law. These changes shall apply retroactively to July 1, 1990." [1991 1st sp.s. c 26 § 3.]

Severability—1991 1st sp.s. 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." [1991 1st sp.s. c 26 § 4.]

Effective dates—**Severability**—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Effective dates—1990 2nd ex.s. c 1: See note following RCW 84.52.010.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

82.14.330 Municipal criminal justice assistance account—Distributions based on population—Expiration of section. (1) The moneys deposited in the municipal criminal justice assistance account for distribution under this section shall be distributed at such times as distributions are made under RCW 82.44.150. Such moneys shall be distributed to the cities of the state as follows:

(a) For fiscal year 1991, each city with a population of under ten thousand shall receive a distribution of three thousand two hundred fifty dollars. Any remaining moneys shall be distributed to all cities ratably on the basis of population as last determined by the office of financial management.

(b) For fiscal year 1992 and thereafter, each city with a population of under ten thousand shall receive a distribution of two thousand seven hundred fifty dollars. Any remaining moneys shall be distributed to all cities ratably on the basis of population as last determined by the office of financial management.

(2) Moneys distributed under this section shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

(3) This section expires January 1, 1994. [1991 c 311 § 4; 1990 2nd ex.s. c 1 § 105.]

Retroactive application—1991 c 311: "The changes contained in sections 2, 3, 4, and 5 of this act are remedial, curative, and clarify ambiguities in prior existing law. These changes shall apply retroactively to July 1, 1990." [1991 c 311 § 6.]

Severability—1991 c 311: See note following RCW 82.14.310.

Effective dates—1990 2nd ex.s. c 1: See note following RCW 84.52.010.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

82.14.340 Additional sales and use tax for criminal justice purposes—Expiration of section. The legislative authority of any county with a population of two hundred thousand or more, any county located east of the crest of the Cascade mountains with a population of

one hundred fifty thousand or more, and any other county with a population of one hundred fifty thousand or more that has had its population increase by at least twenty-four percent during the preceding nine years, as certified by the office of financial management for the first day of April of each year, may and, if requested by resolution of the governing bodies of cities in the county with an aggregate population equal to or greater than fifty percent of the total population of the county, as last determined by the office of financial management, shall submit an authorizing proposition to the voters of the county and if approved by a majority of persons voting, fix and impose a sales and use tax in accordance with the terms of this chapter.

The tax authorized in this section shall be in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state pursuant to chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within such county. The rate of tax shall equal one-tenth of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax).

When distributing moneys collected under this section, the state treasurer shall distribute ten percent of the moneys to the county in which the tax was collected. The remainder of the moneys collected under this section shall be distributed to the county and the cities within the county ratably based on population as last determined by the office of financial management. In making the distribution based on population, the county shall receive that proportion that the unincorporated population of the county bears to the total population of the county and each city shall receive that proportion that the city incorporated population bears to the total county population.

Moneys received from any tax imposed under this section shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures. Moneys received by the county and the cities within the county from any tax imposed under this section may be expended for domestic violence community advocates, as defined in RCW 70.123.020, if, prior to July 28, 1991, and prior to approval of the voters, the legislative authority of the county, which submitted an authorizing proposition to the voters of the county, adopted by ordinance a financial plan that included expenditure of a portion of the moneys received for domestic violence community advocates.

This section expires January 1, 1994. [1991 c 311 § 5; 1991 c 301 § 16; 1990 2nd ex.s. c 1 § 901.]

Reviser's note: This section was amended by 1991 c 301 § 16 and by 1991 c 311 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1991 c 311: See note following RCW 82.14.310.

Retroactive application—1991 c 311: See note following RCW 82.14.330.

Finding—1991 c 301: See note following RCW 10.99.020.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Chapter 82.14B

COUNTIES—TAX ON TELEPHONE ACCESS LINE USE

Sections

- 82.14B.010 Findings. (Effective December 5, 1991, if Referendum Bill No. 42 is approved by the electorate at the November 1991 general election.)
- 82.14B.020 Definitions. (Effective December 5, 1991, if Referendum Bill No. 42 is approved by the electorate at the November 1991 general election.)
- 82.14B.030 County enhanced 911 excise tax on use of switched access lines authorized—Amount—State enhanced 911 excise tax—Amount. (Effective December 5, 1991, if Referendum Bill No. 42 is approved by the electorate at the November 1991 general election.)
- 82.14B.040 Collection of tax by local exchange company required. (Effective December 5, 1991, if Referendum Bill No. 42 is approved by the electorate at the November 1991 general election.)
- 82.14B.080 Repealed. (Effective December 5, 1991, if Referendum Bill No. 42 is approved by the electorate at the November 1991 general election.)
- 82.14B.090 Emergency service communication districts—Emergency service communication system—Financing—Excise tax. (Effective December 5, 1991, if Referendum Bill No. 42 is approved by the electorate at the November 1991 general election.)
- 82.14B.100 Emergency service communication districts—Application of RCW 82.14B.040 through 82.14B.060. (Effective December 5, 1991, if Referendum Bill No. 42 is approved by the electorate at the November 1991 general election.)

82.14B.010 Findings. (Effective December 5, 1991, if Referendum Bill No. 42 is approved by the electorate at the November 1991 general election.) The legislature finds that the state and counties should be provided with an additional revenue source to fund enhanced 911 emergency communication systems throughout the state on a multicounty, county-wide, or district-wide basis. The legislature further finds that the most efficient and appropriate method of deriving additional revenue for this purpose is to impose an excise tax on the use of switched access lines. [1991 c 54 § 9; 1981 c 160 § 1.]

Referral to electorate—1991 c 54: See note following RCW 38.52.030.

82.14B.020 Definitions. (Effective December 5, 1991, if Referendum Bill No. 42 is approved by the electorate at the November 1991 general election.) As used in this chapter:

(1) "Emergency services communication system" means a multicounty, county-wide, or district-wide radio or landline communications network, including an enhanced 911 telephone system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for police, fire, medical, or other emergency services.

(2) "Enhanced 911 telephone system" means a public telephone system consisting of a network, data base, and on-premises equipment that is accessed by dialing 911 and that enables reporting police, fire, medical, or other emergency situations to a public safety answering point. The system includes the capability to selectively route incoming 911 calls to the appropriate public safety answering point that operates in a defined 911 service area and the capability to automatically display the name, address, and telephone number of incoming 911 calls at the appropriate public safety answering point.

(3) "Switched access line" means the telephone service line which connects a subscriber's main telephone(s) or equivalent main telephone(s) to the local exchange company's switching office.

(4) "Local exchange company" has the meaning ascribed to it in RCW 80.04.010. [1991 c 54 § 10; 1981 c 160 § 2.]

Referral to electorate—1991 c 54: See note following RCW 38.52.030.

82.14B.030 County enhanced 911 excise tax on use of switched access lines authorized—Amount—State enhanced 911 excise tax—Amount. (Effective December 5, 1991, if Referendum Bill No. 42 is approved by the electorate at the November 1991 general election.)

(1) The legislative authority of a county may impose a county enhanced 911 excise tax on the use of switched access lines in an amount not exceeding fifty cents per month for each switched access line. The amount of tax shall be uniform for each switched access line. Each county shall provide notice of such tax to all local exchange companies serving in the county at least sixty days in advance of the date on which the first payment is due.

(2) Beginning January 1, 1992, a state enhanced 911 excise tax is imposed on all switched access lines in the state. For 1992, the tax shall be set at a rate of twenty cents per month for each switched access line. Until December 31, 1998, the amount of tax shall not exceed twenty cents per month for each switched access line and thereafter shall not exceed ten cents per month for each switched access line. The tax shall be uniform for each switched access line. Tax proceeds shall be deposited by the treasurer in the enhanced 911 account created in RCW 38.52.540.

(3) By August 31st of each year the state enhanced 911 coordinator shall recommend the level for the next year of the state enhanced 911 excise tax to the utilities and transportation commission. The commission shall by the following October 31st determine the level of the state enhanced 911 excise tax for the following year. [1991 c 54 § 11; 1981 c 160 § 3.]

Referral to electorate—1991 c 54: See note following RCW 38.52.030.

82.14B.040 Collection of tax by local exchange company required. (Effective December 5, 1991, if Referendum Bill No. 42 is approved by the electorate at the November 1991 general election.) The state enhanced 911 tax and the county enhanced 911 tax created in this chapter shall be collected from the user by the local exchange company providing the switched access line. The local exchange company shall state the amount of the taxes separately on the billing statement which is sent to the user. [1991 c 54 § 12; 1981 c 160 § 4.]

Referral to electorate—1991 c 54: See note following RCW 38.52.030.

82.14B.080 Repealed. (Effective December 5, 1991, if Referendum Bill No. 42 is approved by the electorate at the November 1991 general election.) See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

82.14B.090 Emergency service communication districts—Emergency service communication system—Financing—Excise tax. (Effective December 5, 1991, if Referendum Bill No. 42 is approved by the electorate at the November 1991 general election.) An emergency service communication district is authorized to finance and provide an emergency service communication system and to finance the system by imposing the excise tax authorized in RCW 82.14B.030. [1991 c 54 § 13; 1987 c 17 § 3.]

Referral to electorate—1991 c 54: See note following RCW 38.52.030.

82.14B.100 Emergency service communication districts—Application of RCW 82.14B.040 through 82.14B.060. (Effective December 5, 1991, if Referendum Bill No. 42 is approved by the electorate at the November 1991 general election.) RCW 82.14B.040 through 82.14B.060 apply to any emergency service communication district established under RCW 82.14B.070 and 82.14B.090. [1991 c 54 § 14; 1987 c 17 § 4.]

Referral to electorate—1991 c 54: See note following RCW 38.52.030.

Chapter 82.16 PUBLIC UTILITY TAX

Sections

82.16.010	Definitions.
82.16.052	Deductions in computing tax—Energy efficiency programs—Expiration of section.

82.16.010 Definitions. For the purposes of this chapter, unless otherwise required by the context:

(1) "Railroad business" means the business of operating any railroad, by whatever power operated, for public use in the conveyance of persons or property for hire. It shall not, however, include any business herein defined as an urban transportation business.

(2) "Express business" means the business of carrying property for public hire on the line of any common carrier operated in this state, when such common carrier is not owned or leased by the person engaging in such business.

(3) "Railroad car business" means the business of renting, leasing or operating stock cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any other kinds of cars used for transportation of property or persons upon the line of any railroad operated in this state when such railroad is not owned or leased by the person engaging in such business.

(4) "Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale.

(5) "Light and power business" means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.

(6) "Telegraph business" means the business of affording telegraphic communication for hire.

(7) "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

(8) "Motor transportation business" means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier or contract carrier as defined by RCW 81.68.010 and 81.80.010: PROVIDED, That "motor transportation business" shall not mean or include the transportation of logs or other forest products exclusively upon private roads or private highways.

(9) "Urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, insofar as (a) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof, or (b) operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope hereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pickup, or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property.

(10) "Public service business" means any of the businesses defined in subdivisions (1), (2), (3), (4), (5), (6), (7), (8), and (9) or any business subject to control by the state, or having the powers of eminent domain and the duties incident thereto, or any business hereafter declared by the legislature to be of a public service nature,

except telephone business as defined in RCW 82.04.065 and low-level radioactive waste site operating companies as redefined in RCW 81.04.010. It includes, among others, without limiting the scope hereof: Airplane transportation, boom, dock, ferry, log patrol, pipe line, toll bridge, toll logging road, water transportation and wharf businesses.

(11) "Tugboat business" means the business of operating tugboats, towboats, wharf boats or similar vessels in the towing or pushing of vessels, barges or rafts for hire.

(12) "Gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(13) The meaning attributed, in chapter 82.04 RCW, to the term "tax year," "person," "value proceeding or accruing," "business," "engaging in business," "in this state," "within this state," "cash discount" and "successor" shall apply equally in the provisions of this chapter. [1991 c 272 § 14; 1989 c 302 § 203. Prior: 1989 c 302 § 102; 1986 c 226 § 1; 1983 2nd ex.s. c 3 § 32; 1982 2nd ex.s. c 9 § 1; 1981 c 144 § 2; 1965 ex.s. c 173 § 20; 1961 c 293 § 12; 1961 c 15 § 82.16.010; prior: 1959 ex.s. c 3 § 15; 1955 c 389 § 28; 1949 c 228 § 10; 1943 c 156 § 10; 1941 c 178 § 12; 1939 c 225 § 20; 1937 c 227 § 11; 1935 c 180 § 37; Rem. Supp. 1949 § 8370-37.]

Effective dates—1991 c 272: See RCW 81.108.901.

Finding, purpose—1989 c 302: See note following RCW 82.04.120.

Effective date—1986 c 226: "This act shall take effect July 1, 1986." [1986 c 226 § 3.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Effective date—1982 2nd ex.s. c 9: "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 August 1, 1982." [1982 2nd ex.s. c 9 § 4.]

Intent—1981 c 144: "The legislature recognizes that there have been significant changes in the nature of the telephone business in recent years. Once solely the domain of regulated monopolies, the telephone business has now been opened up to competition with respect to most of its services and equipment. As a result of this competition, the state and local excise tax structure in the state of Washington has become discriminatory when applied to regulated telephone company transactions that are similar in nature to those consummated by nonregulated competitors. Telephone companies are forced to operate at a significant state and local tax disadvantage when compared to these nonregulated competitors.

To remedy this situation, it is the intent of the legislature to place telephone companies and nonregulated competitors of telephone companies on an equal excise tax basis with regard to the providing of similar goods and services. Therefore competitive telephone services shall for excise tax purposes only, unless otherwise provided, be treated as retail sales under the applicable state and local business and occupation and sales and use taxes. This shall not affect any requirement that regulated telephone companies have under Title 80 RCW, unless otherwise provided.

Nothing in this act affects the authority and responsibility of the Washington utilities and transportation commission to set fair, just, reasonable, and sufficient rates for telephone service." [1981 c 144 § 1.]

Severability—1981 c 144: "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." [1981 c 144 § 12.]

Effective date—1981 c 144: "This act shall take effect on January 1, 1982." [1981 c 144 § 13.]

Effective date—1965 ex.s. c 173: See note following RCW 82.04.050.

82.16.052 Deductions in computing tax—Energy efficiency programs—Expiration of section. (1) In computing tax under this chapter there shall be deducted from the gross income:

(a) Payments made under RCW 19.27A.035; and

(b) Those amounts expended on additional programs that improve the efficiency of energy end use if priority is given to senior citizens and low-income citizens in the course of carrying out such programs.

(2) The department, after consultation with the utilities and transportation commission in the case of investor-owned utilities and the governing bodies of locally regulated utilities, shall determine the eligibility of individual programs for deductions under this section.

(3) Until July 1, 1992, utilities may deduct from the amount of tax paid under this chapter fifty percent of the payments made under RCW 19.27A.055, excluding any federal funds that are passed through to a utility for the purpose of retraining local code officials.

(4) This section shall expire January 1, 1996. [1990 c 2 § 10.]

Effective dates—1990 c 2: See note following RCW 19.27.040.

Findings—Severability—1990 c 2: See notes following RCW 19.27A.015.

Chapter 82.23A

PETROLEUM PRODUCTS—UNDERGROUND STORAGE TANK PROGRAM FUNDING

(Formerly: Tax on petroleum products)

Sections

82.23A.020 Tax imposed—Revenue to be used for underground petroleum storage tank programs.

82.23A.020 Tax imposed—Revenue to be used for underground petroleum storage tank programs. (1) A tax is imposed on the privilege of possession of petroleum products in this state. The rate of the tax shall be fifty one-hundredths of one percent multiplied by the wholesale value of the petroleum product.

(2) Moneys collected under this chapter shall be deposited in the pollution liability insurance program trust account under RCW 70.148.020.

(3) Chapter 82.32 RCW applies to the tax imposed in this chapter. The tax due dates, reporting periods, and return requirements applicable to chapter 82.04 RCW apply equally to the tax imposed in this chapter.

(4) Within thirty days after the end of each calendar quarter the department shall determine the "quarterly balance," which shall be the cash balance in the pollution liability insurance program trust account as of the

last day of that calendar quarter, after excluding the reserves determined for that quarter under RCW 70.148-.020 (2) and (3). Balance determinations by the department under this section are final and shall not be used to challenge the validity of any tax imposed under this section. For each subsequent calendar quarter, tax shall be imposed under this section during the entire calendar quarter unless:

(a) Tax was imposed under this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than fifteen million dollars; or

(b) Tax was not imposed under this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than seven million five hundred thousand dollars. [1991 c 4 § 8; 1990 c 64 § 12; 1989 c 383 § 16.]

Severability—1991 c 4: See note following RCW 70.148.120.

Chapter 82.23B OIL SPILL RESPONSE TAX

Sections

82.23B.010	Definitions.
82.23B.020	Oil spill response tax—Oil spill administration tax—Study of tax credits.
82.23B.030	Exemption.
82.23B.040	Credit.
82.23B.050	Rules.
82.23B.060	Imposition of taxes.
82.23B.900	Effective dates—Severability—1991 c 200.

82.23B.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Barrel" means a unit of measurement of volume equal to forty-two United States gallons of crude oil or petroleum product.

(2) "Crude oil" means any naturally occurring liquid hydrocarbons at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline.

(3) "Department" means the department of revenue.

(4) "Marine terminal" means a facility of any kind, other than a waterborne vessel, that is used for transferring crude oil or petroleum products to or from a waterborne vessel or barge.

(5) "Navigable waters" means those waters of the state and their adjoining shorelines that are subject to the ebb and flow of the tide, including the Columbia and Snake rivers.

(6) "Person" has the meaning provided in RCW 82.04.030.

(7) "Petroleum product" means any liquid hydrocarbons at atmospheric temperature and pressure that are the product of the fractionation, distillation, or other refining or processing of crude oil, and that are used as, useable as, or may be refined as a fuel or fuel blendstock, including but not limited to, gasoline, diesel fuel, aviation fuel, bunker fuel, and fuels containing a blend of alcohol and petroleum.

(8) "Taxpayer" means the person owning crude oil or petroleum products immediately before the same are off-loaded at a marine terminal in this state and who is liable for the taxes imposed by this chapter.

(9) "Waterborne vessel or barge" means any ship, barge, or other watercraft capable of travelling on the navigable waters of this state and capable of transporting any crude oil or petroleum product in quantities of ten thousand gallons or more for purposes other than providing fuel for its motor or engine. [1991 c 200 § 801.]

82.23B.020 Oil spill response tax—Oil spill administration tax—Study of tax credits. (1) An oil spill response tax is imposed on the privilege of off-loading crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately before off-loading begins at the rate of two cents per barrel of crude oil or petroleum product off-loaded.

(2) In addition to the tax imposed in subsection (1) of this section, an oil spill administration tax is imposed on the privilege of off-loading crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately before off-loading begins at the rate of three cents per barrel of crude oil or petroleum product off-loaded.

(3) The taxes imposed by this chapter shall be collected by the marine terminal operator from the owner of the crude oil or petroleum products off-loaded at the marine terminal. If any person charged with collecting the taxes fails to bill the taxpayer for the taxes, or in the alternative has not notified the taxpayer in writing of the imposition of the taxes, or having collected the taxes, fails to pay them to the department in the manner prescribed by this chapter, whether such failure is the result of the person's own acts or the result of acts or conditions beyond the person's control, he or she shall, nevertheless, be personally liable to the state for the amount of the taxes. Payment of the taxes by the owner to a marine terminal operator shall relieve the owner from further liability for the taxes.

(4) Taxes collected under this chapter shall be held in trust until paid to the department. Any person collecting the taxes who appropriates or converts the taxes collected shall be guilty of a gross misdemeanor if the money required to be collected is not available for payment on the date payment is due. The taxes required by this chapter to be collected shall be stated separately from other charges made by the marine terminal operator in any invoice or other statement of account provided to the taxpayer.

(5) If a taxpayer fails to pay the taxes imposed by this chapter to the person charged with collection of the taxes and the person charged with collection fails to pay the taxes to the department, the department may, in its

discretion, proceed directly against the taxpayer for collection of the taxes.

(6) The taxes shall be due from the marine terminal operator, along with reports and returns on forms prescribed by the department, within twenty-five days after the end of the month in which the taxable activity occurs.

(7) The amount of taxes, until paid by the taxpayer to the marine terminal operator or to the department, shall constitute a debt from the taxpayer to the marine terminal operator. Any person required to collect the taxes under this chapter who, with intent to violate the provisions of this chapter, fails or refuses to do so as required and any taxpayer who refuses to pay any taxes due under this chapter, shall be guilty of a misdemeanor as provided in chapter 9A.20 RCW.

(8) Upon prior approval of the department, the owner of crude oil or petroleum products off-loaded in this state may pay the taxes imposed by this chapter directly to the department. The department shall give its approval for direct payment under this section whenever it appears, in the department's judgment, that direct payment will enhance the administration of the taxes imposed under this chapter. The department shall provide by rule for the issuance of a direct payment certificate to any taxpayer qualifying for direct payment of the taxes. Good faith acceptance of a direct payment certificate by a terminal operator shall relieve the marine terminal operator from any liability for the collection or payment of the taxes imposed under this chapter.

(9) All receipts from the tax imposed in subsection (1) of this section shall be deposited into the state oil spill response account. All receipts from the tax imposed in subsection (2) of this section shall be deposited into the state oil spill administration account.

(10) Within forty-five days after the end of each calendar quarter, the office of financial management shall determine the balance of the oil spill response account as of the last day of that calendar quarter. Balance determinations by the office of financial management under this section are final and shall not be used to challenge the validity of any tax imposed under this chapter. The office of financial management shall promptly notify the departments of revenue and ecology of the account balance once a determination is made. For each subsequent calendar quarter, the tax imposed by subsection (1) of this section shall be imposed during the entire calendar quarter unless:

(a) Tax was imposed under subsection (1) of this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than twenty-five million dollars; or

(b) Tax was not imposed under subsection (1) of this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than fifteen million dollars.

(11) The office of marine safety, the department of revenue, and the department of trade and economic development shall study tax credits for taxpayers employing vessels with the best achievable technology and the best available protection to reduce the risk of oil spills to

the navigable waters of the state and submit the study to the appropriate standing committees of the legislature by December 1, 1992. [1991 c 200 § 802.]

82.23B.030 Exemption. The taxes imposed under this chapter shall only apply to the first off-loading of crude oil or petroleum products at a marine terminal in this state and not to the later transporting and subsequent off-loading of the same oil or petroleum product, whether in the form originally off-loaded in this state or after refining or other processing. [1991 c 200 § 803.]

82.23B.040 Credit. Credit shall be allowed against the taxes imposed under this chapter for any crude oil or petroleum products off-loaded at a marine terminal and subsequently exported from or sold for export from the state. [1991 c 200 § 804.]

82.23B.050 Rules. The department shall adopt such rules as may be necessary to enforce and administer the provisions of this chapter. Chapter 82.32 RCW applies to the administration, collection, and enforcement of the taxes levied under this chapter. [1991 c 200 § 808.]

82.23B.060 Imposition of taxes. The taxes imposed in this chapter shall take effect October 1, 1991. [1991 c 200 § 809.]

82.23B.900 Effective dates—Severability—1991 c 200. See RCW 90.56.901 and 90.56.904.

Chapter 82.24

TAX ON CIGARETTES

Sections

82.24.030	Stamps to be affixed—Meter machines authorized.
82.24.040	Duty of wholesaler.
82.24.050	Duty of retailer.
82.24.110	Other offenses—Penalties.
82.24.120	Violations—Penalties and interest.
82.24.130	Seizure and forfeiture.
82.24.180	Seized property may be returned.
82.24.250	Transportation of unstamped cigarettes—Invoices and delivery tickets required—Stop and inspect.

82.24.030 Stamps to be affixed—Meter machines authorized. In order to enforce collection of the tax hereby levied, the department of revenue shall design and have printed stamps of such size and denominations as may be determined by the department, such stamps to be affixed on the smallest container or package that will be handled, sold, used, consumed, or distributed, to permit the department to readily ascertain by inspection, whether or not such tax has been paid. Except as otherwise provided in this chapter, every person shall cause to be affixed on every package of cigarettes, stamps of an amount equaling the tax due thereon before he or she sells, offers for sale, uses, consumes, handles, removes, or otherwise disturbs and distributes the same: PROVIDED, That where it is established to the satisfaction of the department that it is impractical to affix such

stamps to the smallest container or package, the department may authorize the affixing of stamps of appropriate denomination to a large container or package.

The department may authorize the use of meter stamping machines for imprinting stamps, which imprinted stamps shall be in lieu of those otherwise provided for under this chapter, and if such use is authorized, shall provide reasonable rules and regulations with respect thereto. [1990 c 216 § 1; 1975 1st ex.s. c 278 § 61; 1961 c 15 § 82.24.030. Prior: 1959 c 270 § 3; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.24.040 Duty of wholesaler. No wholesaler in this state may possess within this state unstamped cigarettes except that:

(1) Every wholesaler in the state who is licensed under Washington state law may possess within this state unstamped cigarettes for such period of time after receipt as is reasonably necessary to affix the stamps as required; and

(2) Any wholesaler in the state who is licensed under Washington state law and who furnishes a surety bond in a sum satisfactory to the department, shall be permitted to set aside, without affixing the stamps required by this chapter, such part of his stock as may be necessary for the conduct of his business in making sales to persons in another state or foreign country, to instrumentalities of the federal government, or to the established governing bodies of any Indian tribe, recognized as such by the United States Department of the Interior. Such unstamped stock shall be kept separate and apart from stamped stock.

(3) Every wholesaler licensed under Washington state law shall, at the time of shipping or delivering any of the articles taxed herein to a point outside of this state, or to a federal instrumentality, or to an Indian tribal organization, make a true duplicate invoice of the same which shall show full and complete details of the sale or delivery, whether or not stamps were affixed thereto, and shall transmit such true duplicate invoice to the main office of the department, at Olympia, not later than the fifteenth day of the following calendar month, and for failure to comply with the requirements of this section the department may revoke the permission granted to the taxpayer to maintain a stock of goods to which the stamps required by this chapter have not been affixed. The department may also revoke this permission to maintain a stock of unstamped goods for sale to a specific Indian tribal organization when it appears that sales of unstamped cigarettes to persons who are not enrolled members of a recognized Indian tribe are taking place, or have taken place, within the exterior boundaries of the reservation occupied by that tribe. [1990 c 216 § 2; 1969 ex.s. c 214 § 1; 1961 c 15 § 82.24.040. Prior: 1959 c 270 § 4; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23,

part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

82.24.050 Duty of retailer. No retailer in this state may possess unstamped cigarettes within this state unless the retailer is licensed under Washington state law and, within a period of time after receipt of any of the articles taxed herein as is reasonably necessary for the purpose, causes the same to have the requisite denomination and amount of stamps affixed to represent the tax imposed herein: **PROVIDED**, That those articles to which stamps have been properly affixed by a wholesaler or another retailer, licensed under Washington state law, may be retained by any retailer, and that those articles intended for sale to qualified purchasers may, under rules adopted by the department of revenue, be retained by federal instrumentalities and Indian tribal organizations, without affixing the stamps required by this chapter. [1990 c 216 § 3; 1969 ex.s. c 214 § 2; 1961 c 15 § 82.24.050. Prior: 1959 c 270 § 5; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

82.24.110 Other offenses—Penalties. (1) Each of the following acts is a gross misdemeanor and punishable as such:

(a) To sell, except as a licensed wholesaler or licensed retailer engaged in interstate commerce as to the article being taxed herein, without the stamp first being affixed;

(b) To use or have in possession knowingly or intentionally any forged or counterfeit stamps;

(c) For any person other than the department of revenue or its duly authorized agent to sell any stamps not affixed to any of the articles taxed herein whether such stamps are genuine or counterfeit;

(d) To violate any of the provisions of this chapter;

(e) To violate any lawful rule or regulation made and published by the department of revenue;

(f) To use any stamps more than once;

(g) To refuse to allow the department of revenue or any duly authorized agent thereof, on demand, to make full inspection of any place of business where any of the articles herein taxed are sold or otherwise hinder or prevent such inspection;

(h) For any retailer, except one permitted to maintain an unstamped stock to engage in interstate business as provided herein, to have in possession in any place of business any of the articles herein taxed, unless the same have the proper stamps attached;

(i) For any person to make, use, or present or exhibit to the department of revenue or any duly authorized agent thereof, any invoice for any of the articles herein taxed which bears an untrue date or falsely states the nature or quantity of the goods therein invoiced;

(j) For any wholesaler or retailer or his or her agents or employees to fail to produce on demand of the department of revenue all invoices of all the articles herein taxed or stamps bought by him or her or received in his or her place of business within five years prior to such demand unless he or she can show by satisfactory proof

that the nonproduction of the invoices was due to causes beyond his control;

(k) For any person to receive in this state any shipment of any of the articles taxed herein, when the same are not stamped, for the purpose of avoiding payment of tax. It is presumed that persons other than dealers who purchase or receive shipments of unstamped cigarettes do so to avoid payment of the tax imposed herein;

(l) For any person to possess or transport upon the public highways, roads, or streets of this state a quantity of sixty thousand cigarettes or less unless the proper stamps required by this chapter have been affixed or unless the person transporting the cigarettes has in actual possession invoices or delivery tickets therefor which show the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the cigarettes so transported and unless the cigarettes are consigned to or purchased by any person in this state who is a purchaser or consignee authorized by this chapter to possess unstamped cigarettes in this state.

(2) It is unlawful for any person knowingly or intentionally to possess or to transport upon the public highways, roads, or streets of this state a quantity in excess of sixty thousand cigarettes unless the proper stamps required by this chapter are affixed thereto or unless the person transporting the cigarettes actually possesses invoices or delivery tickets showing the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the cigarettes so transported. Violation of this section shall be punished as a class C felony under Title 9A RCW.

(3) All agents, employees, and others who aid, abet, or otherwise participate in any way in the violation of the provisions of this chapter or in any of the offenses described in this chapter shall be guilty and punishable as principals, to the same extent as any wholesaler or retailer or any other person violating the provisions thereof. [1990 c 216 § 4; 1987 c 496 § 1; 1975 1st ex.s. c 278 § 63; 1961 c 15 § 82.24.110. Prior: 1941 c 178 § 15; 1935 c 180 § 86; Rem. Supp. 1941 § 8370–86.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.24.120 Violations—Penalties and interest. If any person, subject to the provisions of this chapter or any rules and regulations promulgated by the department of revenue under authority hereof, is found to have failed to affix the stamps required, or to have them affixed as herein provided, or to pay any tax due hereunder, or to have violated any of the provisions of this chapter or rules and regulations promulgated by the department of revenue in the administration hereof, there shall be assessed and collected from such person, in addition to any tax that may be found due, a penalty equal to the greater of ten dollars per package of unstamped cigarettes or two hundred fifty dollars, plus interest thereon at the rate of one percent for each thirty days or portions thereof from the date the tax became due, and

upon notice mailed to the last known address of the person said amount shall become due and payable in ten days, at which time the department or its duly authorized agent may make immediate demand upon such person for the payment of all such taxes and penalties. The department, for good reason shown, may remit all or any part of penalties imposed, but the taxpayer must pay all taxes due and interest thereon, at the rate of one percent for each thirty days or portion thereof. The keeping of any unstamped articles coming within the provisions of this chapter shall be prima facie evidence of intent to violate the provisions of this chapter. [1990 c 267 § 1; 1975 1st ex.s. c 278 § 64; 1961 c 15 § 82.24.120. Prior: 1949 c 228 § 15; 1939 c 225 § 25; 1935 c 180 § 87; Rem. Supp. 1949 § 8370–87.]

Effective date—1990 c 267: "This act shall take effect January 1, 1991." [1990 c 267 § 3.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.24.130 Seizure and forfeiture. (1) The following are subject to seizure and forfeiture:

(a) Subject to RCW 82.24.250, any articles taxed in this chapter that are found at any point within this state, which articles are held, owned, or possessed by any person, and that do not have the stamps affixed to the packages or containers.

(b) 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 (a) of this subsection, except:

(i) A conveyance used by any person as a common or contract carrier having in actual possession invoices or delivery tickets showing the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the cigarettes transported, 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) A conveyance subject to forfeiture under this section by reason of any act or omission of which the owner thereof establishes to have been committed or omitted without his or her knowledge or consent;

(iii) A conveyance encumbered by a bona fide security interest if the secured party neither had knowledge of nor consented to the act or omission.

(c) Any vending machine used for the purpose of violating the provisions of this chapter.

(2) Property subject to forfeiture under this chapter may be seized by any agent of the department authorized to collect taxes or law enforcement officer of this state upon process issued by any superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant; or

(b) The department 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 and

exigent circumstances exist making procurement of a search warrant impracticable.

(3) Notwithstanding the foregoing provisions of this section, articles taxed in this chapter which are in the possession of a wholesaler or retailer, licensed under Washington state law, for a period of time necessary to affix the stamps after receipt of the articles, shall not be considered contraband. [1990 c 216 § 5; 1987 c 496 § 2; 1972 ex.s. c 157 § 5; 1961 c 15 § 82.24.130. Prior: 1941 c 178 § 16; 1935 c 180 § 88; Rem. Supp. 1941 § 8370-88.]

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

82.24.180 Seized property may be returned. The department of revenue may return any property seized under the provisions of this chapter when it is shown that there was no intention to violate the provisions thereof.

When any property is returned under this section, the department may return such goods to the parties from whom they were seized if and when such parties affix the proper amount of stamps thereto, and pay to the department as penalty an amount equal to the greater of ten dollars per package of unstamped cigarettes or two hundred fifty dollars, and interest thereon at the rate of one percent for each thirty days or portion thereof from the date the tax became due, and in such cases, no advertisement shall be made or notices posted in connection with said seizure. [1990 c 267 § 2; 1975 1st ex.s. c 278 § 66; 1961 c 15 § 82.24.180. Prior: 1935 c 180 § 90; RRS § 8370-90.]

Effective date—1990 c 267: See note following RCW 82.24.120.

Construction—**Severability**—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.24.250 Transportation of unstamped cigarettes—Invoices and delivery tickets required—Stop and inspect. No person other than (1) a licensed wholesaler in its own vehicle, or (2) a person who has given notice to the department in advance of the commencement of transportation shall transport or cause to be transported cigarettes not having the stamps affixed to the packages or containers, upon the public highways, roads or streets of this state. In the case of transportation of unstamped cigarettes such persons shall have in their actual possession invoices or delivery tickets for such cigarettes, which shall show the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the cigarettes so transported. If the cigarettes are consigned to or purchased by any person in this state such purchaser or consignee must be a person who is authorized by chapter 82.24 RCW to possess unstamped cigarettes in this state. In the absence of such invoices or delivery tickets, or, if the name or address of the consignee or purchaser is falsified or if the purchaser or consignee is not authorized by chapter 82.24 RCW to possess unstamped cigarettes, the cigarettes so transported shall be deemed contraband subject to seizure and sale under the provisions of RCW 82.24.130.

Transportation of cigarettes from a point outside this state to a point in some other state will not be considered a violation of this section provided that the person so transporting such cigarettes has in his possession adequate invoices or delivery tickets which give the true name and address of such out-of-state seller or consignor and such out-of-state purchaser or consignee.

In any case where the department or its duly authorized agent, or any peace officer of the state, has knowledge or reasonable grounds to believe that any vehicle is transporting cigarettes in violation of this section, the department, such agent, or such police officer, is authorized to stop such vehicle and to inspect the same for contraband cigarettes.

For purposes of this section, the term "person authorized by chapter 82.24 RCW to possess unstamped cigarettes" shall mean a wholesaler or retailer, licensed under Washington state law, the United States or an agency thereof, and any Indian tribal organization authorized under rules adopted by the department of revenue to possess unstamped cigarettes. [1990 c 216 § 6; 1972 ex.s. c 157 § 6.]

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

Chapter 82.27

TAX ON ENHANCED FOOD FISH

Sections

82.27.060 Payment of tax—Remittance—Returns.

82.27.060 Payment of tax—Remittance—Returns. The taxes levied by this chapter shall be due for payment monthly and remittance therefor shall be made within twenty-five days after the end of the month in which the taxable activity occurs. The taxpayer on or before the due date shall make out a signed return, setting out such information as the department of revenue may require, including the gross measure of the tax, any deductions, credits, or exemptions claimed, and the amount of tax due for the preceding monthly period, which amount shall be transmitted to the department along with the return.

The department may relieve any taxpayer from the obligation of filing a monthly return and may require the return to cover other periods, but in no event may periodic returns be filed for a period greater than one year. In such cases tax payments are due on or before the last day of the month next succeeding the end of the period covered by the return. [1990 c 214 § 1; 1980 c 98 § 6.]

Chapter 82.29A

LEASEHOLD EXCISE TAX

Sections

82.29A.020 Definitions. (Effective January 1, 1993.)

82.29A.020 Definitions. (Effective January 1, 1993.) As used in this chapter the following terms shall be defined as follows, unless the context otherwise requires:

(1) "Leasehold interest" shall mean an interest in publicly owned real or personal property which exists by virtue of any lease, permit, license, or any other agreement, written or verbal, between the public owner of the property and a person who would not be exempt from property taxes if that person owned the property in fee, granting possession and use, to a degree less than fee simple ownership: PROVIDED, That no interest in personal property (excluding land or buildings) which is owned by the United States, whether or not as trustee, or by any foreign government shall constitute a leasehold interest hereunder when the right to use such property is granted pursuant to a contract solely for the manufacture or production of articles for sale to the United States or any foreign government. The term "leasehold interest" shall include the rights of use or occupancy by others of property which is owned in fee or held in trust by a public corporation, commission, or authority created under RCW 35.21.730 or 35.21.660 if the property is listed on or is within a district listed on any federal or state register of historical sites. The term "leasehold interest" shall not include road or utility easements or rights of access, occupancy or use granted solely for the purpose of removing materials or products purchased from a public owner or the lessee of a public owner.

(2) "Taxable rent" shall mean contract rent as defined in subsection (a) of this subsection in all cases where the lease or agreement has been established or renegotiated through competitive bidding, or negotiated or renegotiated in accordance with statutory requirements regarding the rent payable, or negotiated or renegotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor: PROVIDED, That after January 1, 1986, with respect to any lease which has been in effect for ten years or more without renegotiation, taxable rent may be established by procedures set forth in subsection (b) of this subsection. All other leasehold interests shall be subject to the determination of taxable rent under the terms of subsection (b) of this subsection.

For purposes of determining leasehold excise tax on any lands on the Hanford reservation subleased to a private or public entity by the department of ecology, taxable rent shall include only the annual cash rental payment made by such entity to the department of ecology as specifically referred to as rent in the sublease agreement between the parties and shall not include any other fees, assessments, or charges imposed on or collected by such entity irrespective of whether the private or public entity pays or collects such other fees, assessments, or charges as specified in the sublease agreement.

(a) "Contract rent" shall mean the amount of consideration due as payment for a leasehold interest, including: The total of cash payments made to the lessor or to another party for the benefit of the lessor according to the requirements of the lease or agreement, including

any rents paid by a sublessee; expenditures for the protection of the lessor's interest when required by the terms of the lease or agreement; and expenditures for improvements to the property to the extent that such improvements become the property of the lessor. Where the consideration conveyed for the leasehold interest is made in combination with payment for concession or other rights granted by the lessor, only that portion of such payment which represents consideration for the leasehold interest shall be part of contract rent.

"Contract rent" shall not include: (i) Expenditures made by the lessee, which under the terms of the lease or agreement, are to be reimbursed by the lessor to the lessee or expenditures for improvements and protection made pursuant to a lease or an agreement which requires that the use of the improved property be open to the general public and that no profit will inure to the lessee from the lease; (ii) expenditures made by the lessee for the replacement or repair of facilities due to fire or other casualty including payments for insurance to provide reimbursement for losses or payments to a public or private entity for protection of such property from damage or loss or for alterations or additions made necessary by an action of government taken after the date of the execution of the lease or agreement; (iii) improvements added to publicly owned property by a sublessee under an agreement executed prior to January 1, 1976, which have been taxed as personal property of the sublessee prior to January 1, 1976, or improvements made by a sublessee of the same lessee under a similar agreement executed prior to January 1, 1976, and such improvements shall be taxable to the sublessee as personal property; (iv) improvements added to publicly owned property if such improvements are being taxed as personal property to any person.

Any prepaid contract rent shall be considered to have been paid in the year due and not in the year actually paid with respect to prepayment for a period of more than one year. Expenditures for improvements with a useful life of more than one year which are included as part of contract rent shall be treated as prepaid contract rent and prorated over the useful life of the improvement or the remaining term of the lease or agreement if the useful life is in excess of the remaining term of the lease or agreement. Rent prepaid prior to January 1, 1976, shall be prorated from the date of prepayment.

With respect to a "product lease", the value of agricultural products received as rent shall be the value at the place of delivery as of the fifteenth day of the month of delivery; with respect to all other products received as contract rent, the value shall be that value determined at the time of sale under terms of the lease.

(b) If it shall be determined by the department of revenue, upon examination of a lessee's accounts or those of a lessor of publicly owned property, that a lessee is occupying or using publicly owned property in such a manner as to create a leasehold interest and that such leasehold interest has not been established through competitive bidding, or negotiated in accordance with statutory requirements regarding the rent payable, or negotiated under circumstances, established by public

record, clearly showing that the contract rent was the maximum attainable by the lessor, the department may establish a taxable rent computation for use in determining the tax payable under authority granted in this chapter based upon the following criteria: (i) Consideration shall be given to rental being paid to other lessors by lessees of similar property for similar purposes over similar periods of time; (ii) consideration shall be given to what would be considered a fair rate of return on the market value of the property leased less reasonable deductions for any restrictions on use, special operating requirements or provisions for concurrent use by the lessor, another person or the general public.

(3) "Product lease" as used in this chapter shall mean a lease of property for use in the production of agricultural or marine products to the extent that such lease provides for the contract rent to be paid by the delivery of a stated percentage of the production of such agricultural or marine products to the credit of the lessor or the payment to the lessor of a stated percentage of the proceeds from the sale of such products.

(4) "Renegotiated" means a change in the lease agreement which changes the agreed time of possession, restrictions on use, the rate of the cash rental or of any other consideration payable by the lessee to or for the benefit of the lessor, other than any such change required by the terms of the lease or agreement. In addition "renegotiated" shall mean a continuation of possession by the lessee beyond the date when, under the terms of the lease agreement, the lessee had the right to vacate the premises without any further liability to the lessor.

(5) "City" means any city or town. [1991 c 272 § 23; 1986 c 285 § 1; 1979 ex.s. c 196 § 11; 1975-'76 2nd ex.s. c 61 § 2.]

Effective dates—1991 c 272: See RCW 81.108.901.

Effective date—1979 ex.s. c 196: See note following RCW 82.04.240.

Chapter 82.32

GENERAL ADMINISTRATIVE PROVISIONS

Sections

82.32.050	Deficient payments—Penalties and interest—Limitations. (Effective January 1, 1992.)
82.32.060	Excess payment—Credit or refund—Payment of judgments for refund. (Effective until January 1, 1992.)
82.32.060	Excess payment—Credit or refund—Payment of judgments for refund. (Effective January 1, 1992.)
82.32.080	Payment by check—Electronic funds transfer—Mailing returns or remittances—Time extension—Deposits—Records—Payment must accompany return.
82.32.085	Electronic funds transfer—Generally.
82.32.090	Late payment—Disregard of written instructions—Evasion—Penalties. (Effective January 1, 1992.)
82.32.330	Disclosure of return or tax information.
82.32.410	Written determinations as precedents.

82.32.050 Deficient payments—Penalties and interest—Limitations. (Effective January 1, 1992.) (1)

If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due and shall add thereto interest at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until date of payment for tax liabilities arising before January 1, 1992. For tax liabilities arising after December 31, 1991, until the date of payment, the rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year. The department shall notify the taxpayer by mail of the additional amount and the same shall become due and shall be paid within thirty days from the date of the notice, or within such further time as the department may provide.

(2) For the purposes of this section, the rate of interest to be charged to the taxpayer shall be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually, for the months of January, April, July, and October of the immediately preceding calendar year as published by the United States secretary of the treasury.

(3) No assessment or correction of an assessment for additional taxes due may be made by the department more than four years after the close of the tax year, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. [1991 c 142 § 9; 1989 c 378 § 19; 1971 ex.s. c 299 § 16; 1965 ex.s. c 141 § 1; 1961 c 15 § 82-.32.050. Prior: 1951 1st ex.s. c 9 § 5; 1949 c 228 § 20; 1945 c 249 § 9; 1939 c 225 § 27; 1937 c 227 § 17; 1935 c 180 § 188; Rem. Supp. 1949 § 8370-188.]

Effective date—1991 c 142 §§ 9-11: "Sections 9 through 11 of this act shall take effect January 1, 1992." [1991 c 142 § 13.]

Severability—1991 c 142: See RCW 82.32A.900.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.32.060 Excess payment—Credit or refund—Payment of judgments for refund. (Effective until January 1, 1992.) If, upon receipt of an application by a taxpayer for a refund or for an audit of the taxpayer's records, or upon an examination of the returns or records of any taxpayer, it is determined by the department that within the statutory period for assessment of taxes prescribed by RCW 82.32.050 a tax has been paid in excess of that properly due, the excess amount paid within such period shall be credited to the taxpayer's account or shall be refunded to the taxpayer, at the taxpayer's option. No refund or credit shall be made for taxes paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

Notwithstanding the foregoing limitations there shall be refunded or credited to taxpayers engaged in the performance of United States government contracts or sub-contracts the amount of any tax paid, measured by that portion of the amounts received from the United States, which the taxpayer is required by contract or applicable federal statute to refund or credit to the United States, if claim for such refund is filed by the taxpayer with the department within one year of the date that the amount of the refund or credit due to the United States is finally determined and filed within four years of the date on which the tax was paid: PROVIDED, That no interest shall be allowed on such refund.

Any such refunds shall be made by means of vouchers approved by the department and by the issuance of state warrants drawn upon and payable from such funds as the legislature may provide. However, taxpayers who are required to pay taxes by electronic funds transfer under RCW 82.32.080 shall have any refunds paid by electronic funds transfer.

Any judgment for which a recovery is granted by any court of competent jurisdiction, not appealed from, for tax, penalties, and interest which were paid by the taxpayer, and costs, in a suit by any taxpayer shall be paid in like manner, upon the filing with the department of a certified copy of the order or judgment of the court. Except as to the credits in computing tax authorized by RCW 82.04.435, interest at the rate of three percent per annum shall be allowed by the department and by any court on the amount of any refund or recovery allowed to a taxpayer for taxes, penalties, or interest paid by the taxpayer. [1990 c 69 § 1; 1989 c 378 § 20; 1979 ex.s. c 95 § 4; 1971 ex.s. c 299 § 17; 1965 ex.s. c 173 § 27; 1963 c 22 § 1; 1961 c 15 § 82.32.060. Prior: 1951 1st ex.s. c 9 § 6; 1949 c 228 § 21; 1935 c 180 § 189; Rem. Supp. 1949 § 8370-189.]

Effective date—1990 c 69: "This act shall take effect January 1, 1991." [1990 c 69 § 5.]

Severability—1990 c 69: "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." [1990 c 69 § 4.]

Effective dates—**Severability**—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.32.060 Excess payment—Credit or refund—Payment of judgments for refund. (Effective January 1, 1992.) If, upon receipt of an application by a taxpayer for a refund or for an audit of the taxpayer's records, or upon an examination of the returns or records of any taxpayer, it is determined by the department that within the statutory period for assessment of taxes prescribed by RCW 82.32.050 a tax has been paid in excess of that properly due, the excess amount paid within such period shall be credited to the taxpayer's account or shall be refunded to the taxpayer, at the taxpayer's option. No refund or credit shall be made for taxes paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

Notwithstanding the foregoing limitations there shall be refunded or credited to taxpayers engaged in the performance of United States government contracts or sub-contracts the amount of any tax paid, measured by that portion of the amounts received from the United States, which the taxpayer is required by contract or applicable federal statute to refund or credit to the United States, if claim for such refund is filed by the taxpayer with the department within one year of the date that the amount of the refund or credit due to the United States is finally determined and filed within four years of the date on which the tax was paid: PROVIDED, That no interest shall be allowed on such refund.

Any such refunds shall be made by means of vouchers approved by the department and by the issuance of state warrants drawn upon and payable from such funds as the legislature may provide. However, taxpayers who are required to pay taxes by electronic funds transfer under RCW 82.32.080 shall have any refunds paid by electronic funds transfer.

Any judgment for which a recovery is granted by any court of competent jurisdiction, not appealed from, for tax, penalties, and interest which were paid by the taxpayer, and costs, in a suit by any taxpayer shall be paid in like manner, upon the filing with the department of a certified copy of the order or judgment of the court. Except as to the credits in computing tax authorized by RCW 82.04.435, interest at the rate of three percent per annum shall be allowed by the department and by any court on the amount of any refund or recovery allowed to a taxpayer for taxes, penalties, or interest paid by the taxpayer before January 1, 1992. For refunds of amounts paid or other recovery allowed to a taxpayer after December 31, 1991, the rate of interest shall be the rate as computed for assessments under RCW 82.32.050(2), less one percentage point. [1991 c 142 § 10; 1990 c 69 § 1; 1989 c 378 § 20; 1979 ex.s. c 95 § 4; 1971 ex.s. c 299 § 17; 1965 ex.s. c 173 § 27; 1963 c 22 § 1; 1961 c 15 § 82.32.060. Prior: 1951 1st ex.s. c 9 § 6; 1949 c 228 § 21; 1935 c 180 § 189; Rem. Supp. 1949 § 8370-189.]

Effective date—1991 c 142 §§ 9-11: See note following RCW 82.32.050.

Severability—1991 c 142: See RCW 82.32A.900.

Effective date—1990 c 69: "This act shall take effect January 1, 1991." [1990 c 69 § 5.]

Severability—1990 c 69: "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." [1990 c 69 § 4.]

Effective dates—**Severability**—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.32.080 Payment by check—Electronic funds transfer—Mailing returns or remittances—Time extension—Deposits—Records—Payment must accompany return. Payment of the tax may be made by uncertified check under such regulations as the department shall prescribe, but, if a check so received is not paid by the bank on which it is drawn, the taxpayer, by whom such check is tendered, shall remain liable for

payment of the tax and for all legal penalties, the same as if such check had not been tendered.

Payment of the tax is to be made by electronic funds transfer if the amount of the tax due in a calendar year is two hundred forty thousand dollars or more, provided that until January 1, 1992, electronic funds transfer shall be required only if the tax due is one million eight hundred thousand dollars or more. After January 1, 1992, the department may by rule provide for tax thresholds between two hundred forty thousand dollars and one million eight hundred thousand dollars for mandatory use of electronic funds transfer. All taxes administered by this chapter are subject to this requirement except the taxes authorized by chapters 82.14A, 82.14B, 82.24, 82.27, 82.29A, and 84.33 RCW. It is the intent of this section to require electronic funds transfer for those taxes reported on the department's combined excise tax return or any successor return.

A return or remittance which is transmitted to the department 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, except as otherwise provided in this chapter.

The department, for good cause shown, may extend the time for making and filing any return, and may grant such reasonable additional time within which to make and file returns as it may deem proper, but any permanent extension granting the taxpayer a reporting date without penalty more than ten days beyond the due date, and any extension in excess of thirty days shall be conditional on deposit with the department of an amount to be determined by the department which shall be approximately equal to the estimated tax liability for the reporting period or periods for which the extension is granted. In the case of a permanent extension or a temporary extension of more than thirty days the deposit shall be deposited within the state treasury with other tax funds and a credit recorded to the taxpayer's account which may be applied to taxpayer's liability upon cancellation of the permanent extension or upon reporting of the tax liability where an extension of more than thirty days has been granted.

The department shall review the requirement for deposit at least annually and may require a change in the amount of the deposit required when it believes that such amount does not approximate the tax liability for the reporting period or periods for which the extension is granted.

The department shall keep full and accurate records of all funds received and disbursed by it. Subject to the provisions of RCW 82.32.105 and 82.32.350, the department shall apply the payment of the taxpayer first against penalties and interest, and then upon the tax, without regard to any direction of the taxpayer.

The department may refuse to accept any return which is not accompanied by a remittance of the tax shown to be due thereon. When such return is not accepted, the taxpayer shall be deemed to have failed or refused to file a return and shall be subject to the procedures provided in RCW 82.32.100 and to the penalties provided in RCW 82.32.090. The above authority to

refuse to accept a return shall not apply when a return is timely filed and a timely payment has been made by electronic funds transfer. [1990 c 69 § 2; 1971 ex.s c 299 § 18; 1965 ex.s. c 141 § 2; 1963 ex.s. c 28 § 6; 1961 c 15 § 82.32.080. Prior: 1951 1st ex.s. c 9 § 8; 1949 c 228 § 22; 1935 c 180 § 191; Rem. Supp. 1949 § 8370-191.]

Severability—Effective date—1990 c 69: See notes following RCW 82.32.060.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

Tax returns, remittances, etc., filing and receipt when transmitted by mail: RCW 1.12.070.

82.32.085 Electronic funds transfer—Generally. "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, drafts, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

The electronic funds transfer is to be completed so that the state receives collectible funds on or before the next banking day following the due date.

The department shall adopt rules necessary to implement the provisions of RCW 82.32.080 and this section. The rules shall include but are not limited to: (1) Coordinating the filing of tax returns with payment by electronic funds transfer; (2) form and content of electronic funds transfer; (3) voluntary use of electronic funds transfer with permission of the department; (4) use of commonly accepted means of electronic funds transfer; (5) means of crediting and recording proof of payment; and (6) means of correcting errors in transmission. Any changes in the threshold of tax shall be implemented with a separate rule-making procedure. [1990 c 69 § 3.]

Severability—Effective date—1990 c 69: See notes following RCW 82.32.060.

82.32.090 Late payment—Disregard of written instructions—Evasion—Penalties. (Effective January 1, 1992.) (1) If payment of any tax due on a return to be filed by a taxpayer is not received by the department of revenue by the due date, there shall be assessed a penalty of five percent of the amount of the tax; and if the tax is not received within thirty days after the due date, there shall be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received within sixty days after the due date, there shall be assessed a total penalty of twenty percent of the amount of the tax. No penalty so added shall be less than five dollars.

(2) If payment of any tax assessed by the department of revenue is not received by the department by the due date specified in the notice, or any extension thereof, the department shall add a penalty of ten percent of the amount of the additional tax found due. No penalty so added shall be less than five dollars.

(3) If a warrant be issued by the department of revenue for the collection of taxes, increases, and penalties, there shall be added thereto a penalty of five percent of the amount of the tax, but not less than ten dollars.

(4) If the department finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting or tax liabilities, the department shall add a penalty of ten percent of the amount of the additional tax found due because of the failure to follow the instructions. A taxpayer disregards specific written instructions when the department of revenue has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless the department has not issued final instructions because the matter is under appeal pursuant to this chapter or departmental regulations. The department shall not assess the penalty under this section upon any taxpayer who has made a good faith effort to comply with the specific written instructions provided by the department to that taxpayer. Specific written instructions may be given as a part of a tax assessment, audit, determination, or closing agreement, provided that such specific written instructions shall apply only to the taxpayer addressed or referenced on such documents. Any specific written instructions by the department of revenue shall be clearly identified as such and shall inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection.

(5) If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of fifty percent of the additional tax found to be due shall be added.

(6) The aggregate of penalties imposed under this section for failure to pay a tax due on a return, late payment of any tax, increase, or penalty, or issuance of a warrant shall not exceed thirty-five percent of the tax due, or twenty dollars, whichever is greater.

(7) The department of revenue may not impose both the evasion penalty and the penalty for disregarding specific written instructions on the same tax found to be due. [1991 c 142 § 11; 1987 c 502 § 9; 1983 2nd ex.s. c 3 § 23; 1983 c 7 § 32; 1981 c 172 § 8; 1981 c 7 § 2; 1971 ex.s. c 179 § 1; 1967 ex.s. c 149 § 26; 1965 ex.s. c 141 § 3; 1963 ex.s. c 28 § 7; 1961 c 15 § 82.32.090. Prior: 1959 c 197 § 12; 1955 c 110 § 1; 1951 1st ex.s. c 9 § 9; 1949 c 228 § 23; 1937 c 227 § 18; 1935 c 180 § 192; Rem. Supp. 1949 § 8370-192.]

Effective date—1991 c 142 §§ 9-11: See note following RCW 82.32.050.

Severability—1991 c 142: See RCW 82.32A.900.

Construction—**Severability**—**Effective dates**—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Construction—**Severability**—**Effective dates**—1983 c 7: See notes following RCW 82.08.020.

Effective dates—1981 c 172: See note following RCW 82.04.240.

Effective date—1981 c 7: See note following RCW 82.32.045.

Construction—1971 ex.s. c 179: "This 1971 amendatory act shall apply only to taxes becoming due and payable in June, 1971 and thereafter." [1971 ex.s. c 179 § 2.]

82.32.330 Disclosure of return or tax information.

(1) For purposes of this section:

(a) "Disclose" means to make known to any person in any manner whatever a return or tax information;

(b) "Return" means a tax or information return or claim for refund required by, or provided for or permitted under, the laws of this state which is filed with the department of revenue by, on behalf of, or with respect to a person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed;

(c) "Tax information" means (i) a taxpayer's identity, (ii) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability deficiencies, overassessments, or tax payments, whether taken from the taxpayer's books and records or any other source, (iii) whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, (iv) a part of a written determination that is not designated as a precedent and disclosed pursuant to RCW 82.32.410, or a background file document relating to a written determination, and (v) other data received by, recorded by, prepared by, furnished to, or collected by the department of revenue with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of a person under the laws of this state for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense: PROVIDED, That data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Except as provided by RCW 82.32.410, nothing in this chapter shall require any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material, or documents so as to permit its disclosure;

(d) "State agency" means every Washington state office, department, division, bureau, board, commission, or other state agency; and

(e) "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer.

(2) Returns and tax information shall be confidential and privileged, and except as authorized by this section, neither the department of revenue nor any officer, employee, agent, or representative thereof nor any other person may disclose any return or tax information.

(3) The foregoing, however, shall not prohibit the department of revenue or an officer, employee, agent, or representative thereof from:

(a) Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:

(i) In respect of any tax imposed under the laws of this state if the taxpayer or its officer or other person liable under Title 82 RCW is a party in the proceeding; or

(ii) In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding;

(b) Disclosing, subject to such requirements and conditions as the director shall prescribe by rules adopted

pursuant to chapter 34.05 RCW, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person: PROVIDED, That tax information not received from the taxpayer shall not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;

(c) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been either issued or failed [filed] and remains outstanding for a period of at least ten working days. The department shall not be required to disclose any information under this subsection if a taxpayer: (i) Has been issued a tax assessment; (ii) has been issued a warrant that has not been filed; and (iii) has entered a deferred payment arrangement with the department of revenue and is making payments upon such deficiency that will fully satisfy the indebtedness within twelve months;

(d) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been filed with a court of record and remains outstanding;

(e) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

(f) Disclosing such return or tax information, for official purposes only, to the governor or attorney general, or to any state agency, or to any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

(g) Permitting the department of revenue's records to be audited and examined by the proper state officer, his or her agents and employees;

(h) Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of this state; or

(i) Disclosing any such return or tax information to the Department of Justice, the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury, the Department of Defense, the United States customs

service, the coast guard of the United States, and the United States department of transportation, or any authorized representative thereof, for official purposes;

(j) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410; or

(k) Disclosing, in a manner that is not associated with other tax information, the taxpayer name, business address, mailing address, revenue tax registration numbers, standard industrial classification code of a taxpayer, and the dates of opening and closing of business.

(4) Any person acquiring knowledge of any return or tax information in the course of his or her employment with the department of revenue and any person acquiring knowledge of any return or tax information as provided under subsection (3) (f), (g), (h), or (i) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, shall upon conviction be punished by a fine not exceeding one thousand dollars and, if the person guilty of such violation is an officer or employee of the state, such person shall forfeit such office or employment and shall be incapable of holding any public office or employment in this state for a period of two years thereafter. [1991 c 330 § 1; 1990 c 67 § 1; 1985 c 414 § 9; 1984 c 138 § 12; 1969 ex.s. c 104 § 1; 1963 ex.s. c 28 § 10; 1961 c 15 § 82.32.330. Prior: 1943 c 156 § 12; 1935 c 180 § 210; Rem. Supp. 1943 § 8370-210.]

82.32.410 Written determinations as precedents. (1) The director may designate certain written determinations as precedents.

(a) By rule adopted pursuant to chapter 34.05 RCW, the director shall adopt criteria which he or she shall use to decide whether a determination is precedential. These criteria shall include, but not be limited to, whether the determination clarifies an unsettled interpretation of Title 82 RCW or where the determination modifies or clarifies an earlier interpretation.

(b) Written determinations designated as precedents by the director shall be made available for public inspection and shall be published by the department.

(c) The department shall disclose any written determination upon which it relies to support any assessment of tax, interest, or penalty against such taxpayer, after making the deletions provided by subsection (2) of this section.

(2) Before making a written determination available for public inspection under subsection (1) of this section, the department shall delete:

(a) The names, addresses, and other identifying details of the person to whom the written determination pertains and of another person identified in the written determination; and

(b) Information the disclosure of which is specifically prohibited by any statute applicable to the department of revenue, and the department may also delete other information exempted from disclosure by chapter 42.17 RCW or any other statute applicable to the department of revenue. [1991 c 330 § 2.]

Chapter 82.32A

TAXPAYER RIGHTS AND RESPONSIBILITIES

Sections

82.32A.002	Short title.
82.32A.005	Finding.
82.32A.010	Administration of chapter.
82.32A.020	Rights.
82.32A.030	Responsibilities.
82.32A.040	Taxpayer rights advocate.
82.32A.050	Taxpayer services program.
82.32A.900	Severability—1991 c 142.

82.32A.002 Short title. This chapter shall be known and cited as "Washington taxpayers' rights and responsibilities." [1991 c 142 § 1.]

82.32A.005 Finding. (1) The legislature finds that taxes are one of the most sensitive points of contact between citizens and their government, and that there is a delicate balance between revenue collection and taxpayers' rights and responsibilities. The rights, privacy, and property of Washington taxpayers should be protected adequately during the process of the assessment and collection of taxes.

(2) The legislature further finds that the Washington tax system is based largely on voluntary compliance and that taxpayers have a responsibility to inform themselves about applicable tax laws. The legislature also finds that the rights of the taxpayers and their attendant responsibilities are best implemented where the department of revenue provides accurate tax information, instructions, forms, administrative policies, and procedures to assist taxpayers to voluntarily comply with the provisions of the revenue act, Title 82 RCW, and where taxpayers cooperate in the administration of these provisions. [1991 c 142 § 2.]

82.32A.010 Administration of chapter. The department of revenue shall administer this chapter. The department of revenue shall adopt or amend rules as may be necessary to fully implement this chapter and the rights established under this chapter. [1991 c 142 § 3.]

82.32A.020 Rights. The taxpayers of the state of Washington have:

(1) The right to a written explanation of the basis for any tax deficiency assessment, interest, and penalties at the time the assessments are issued;

(2) The right to rely on specific, official written advice and written tax reporting instructions from the department of revenue to that taxpayer, and to have interest, penalties, and in some instances, tax deficiency assessments waived where the taxpayer has so relied to their proven detriment;

(3) The right to redress and relief where tax laws or rules are found to be unconstitutional by the final decision of a court of record and the right to prompt administrative remedies in such cases;

(4) The right to confidentiality and protection from public inquiry regarding financial and business information in the possession of the department of revenue in accordance with the requirements of RCW 82.32.330;

(5) The right to receive, upon request, clear and current tax instructions, rules, procedures, forms, and other tax information; and

(6) The right to a prompt and independent administrative review by the department of revenue of a decision to revoke a tax registration, and to a written determination that either sustains the revocation or reinstates the registration. [1991 c 142 § 4.]

82.32A.030 Responsibilities. To ensure consistent application of the revenue laws, taxpayers have certain responsibilities under chapter 82.32 RCW, including, but not limited to, the responsibility to:

(1) Register with the department of revenue;

(2) Know their tax reporting obligations, and when they are uncertain about their obligations, seek instructions from the department of revenue;

(3) Keep accurate and complete business records;

(4) File accurate returns and pay taxes in a timely manner;

(5) Ensure the accuracy of the information entered on their tax returns;

(6) Substantiate claims for refund;

(7) Timely pay all taxes after closing a business and request cancellation of registration number; and

(8) Timely respond to communications from the department of revenue. [1991 c 142 § 5.]

82.32A.040 Taxpayer rights advocate. The director of revenue shall appoint a taxpayer rights advocate. The advocate shall be responsible for directly assisting taxpayers and their representatives to assure their understanding and utilization of the policies, processes, and procedures available to them in the resolution of problems. [1991 c 142 § 6.]

82.32A.050 Taxpayer services program. The department of revenue shall maintain a taxpayer services program consisting of, but not limited to:

(1) Providing taxpayer assistance in the form of information, education, and instruction in person, by telephone, or by correspondence;

(2) Conducting tax workshops at locations most conveniently accessible to the majority of taxpayers affected; and

(3) Publishing written bulletins, instructions, current revenue laws, rules, court decisions, and interpretive rulings of the department of revenue. [1991 c 142 § 7.]

82.32A.900 Severability—1991 c 142. 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. [1991 c 142 § 12.]

Chapter 82.33

ECONOMIC AND REVENUE FORECASTS

Sections

82.33.010	Economic and revenue forecast council—Oversight and approval of economic and revenue forecasts.
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- 82.33.020 Economic and revenue forecast supervisor—Economic and revenue forecasts—Submittal of forecasts.
- 82.33.030 Alternative economic and revenue forecasts to be provided at the request of the legislative evaluation and accountability program committee.
- 82.33.040 Economic and revenue forecast work group—Availability of information to group—Provision of technical support to economic and revenue forecast council—Meetings.

82.33.010 Economic and revenue forecast council—Oversight and approval of economic and revenue forecasts. (1) The economic and revenue forecast council is hereby created. The council shall consist of two individuals appointed by the governor and four individuals, one of whom is appointed by the chairperson of each of the two largest political caucuses in the senate and house of representatives. The chair of the council shall be selected from among the four caucus appointees. The council may select such other officers as the members deem necessary.

(2) The council shall employ an economic and revenue forecast supervisor to supervise the preparation of all economic and revenue forecasts. As used in this chapter, "supervisor" means the economic and revenue forecast supervisor. Approval by an affirmative vote of at least five members of the council is required for any decisions regarding employment of the supervisor. Employment of the supervisor shall terminate after each term of three years. At the end of the first year of each three-year term the council shall consider extension of the supervisor's term by one year. The council may fix the compensation of the supervisor. The supervisor shall employ staff sufficient to accomplish the purposes of this section.

(3) The economic and revenue forecast council shall oversee the preparation of and approve, by an affirmative vote of at least four members, the official, optimistic, and pessimistic state economic and revenue forecasts prepared under RCW 82.33.020. If the council is unable to approve a forecast before a date required in RCW 82.33.020, the supervisor shall submit the forecast without approval and the forecast shall have the same effect as if approved by the council.

(4) A council member who does not cast an affirmative vote for approval of the official economic and revenue forecast may request, and the supervisor shall provide, an alternative economic and revenue forecast based on assumptions specified by the member.

(5) Members of the economic and revenue forecast council shall serve without additional compensation but shall be reimbursed for travel expenses in accordance with RCW 44.04.120 while attending sessions of the council or on official business authorized by the council. Nonlegislative members of the council shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [1990 c 229 § 1; 1984 c 138 § 4. Formerly RCW 82.01.130.]

Effective date—1990 c 229: See note following RCW 41.06.087.

82.33.020 Economic and revenue forecast supervisor—Economic and revenue forecasts—Submittal of forecasts. (1) Four times each year the supervisor shall

prepare, subject to the approval of the economic and revenue forecast council under RCW 82.33.010:

(a) An official state economic and revenue forecast;

(b) An unofficial state economic and revenue forecast based on optimistic economic and revenue projections; and

(c) An unofficial state economic and revenue forecast based on pessimistic economic and revenue projections.

(2) The supervisor shall submit forecasts prepared under this section, along with any unofficial forecasts provided under RCW 82.33.010, to the governor and the members of the committees on ways and means and the chairs of the committees on transportation of the senate and house of representatives and the chair of the legislative transportation committee, including one copy to the staff of each of the committees, on or before November 20th, February 20th in the even-numbered years, March 20th in the odd-numbered years, June 20th, and September 20th. All forecasts shall include both estimated receipts and estimated revenues in conformance with generally accepted accounting principles as provided by RCW 43.88.037.

(3) All agencies of state government shall provide to the supervisor immediate access to all information relating to economic and revenue forecasts. Revenue collection information shall be available to the supervisor the first business day following the conclusion of each collection period.

(4) The economic and revenue forecast supervisor and staff shall co-locate and share information, data, and files with the tax research section of the department of revenue but shall not duplicate the duties and functions of one another. [1990 c 229 § 2. Prior: 1987 c 505 § 79; 1987 c 502 § 10; 1986 c 112 § 2; 1984 c 138 § 1. Formerly RCW 82.01.120.]

Effective date—1990 c 229: See note following RCW 41.06.087.

82.33.030 Alternative economic and revenue forecasts to be provided at the request of the legislative evaluation and accountability program committee. The administrator of the legislative evaluation and accountability program committee may request, and the supervisor shall provide, alternative economic and revenue forecasts based on assumptions specified by the administrator. [1984 c 138 § 3. Formerly RCW 82.01.125.]

Legislative evaluation and accountability program committee: Chapter 44.48 RCW.

82.33.040 Economic and revenue forecast work group—Availability of information to group—Provision of technical support to economic and revenue forecast council—Meetings. (1) To promote the free flow of information and to promote legislative input in the preparation of forecasts, immediate access to all information relating to economic and revenue forecasts shall be available to the economic and revenue forecast work group, hereby created. Revenue collection information shall be available to the economic and revenue forecast work group the first business day following the conclusion of each collection period. The economic and revenue forecast work group shall consist of one staff member

selected by the executive head or chairperson of each of the following agencies or committees:

- (a) Department of revenue;
- (b) Office of financial management;
- (c) Legislative evaluation and accountability program committee;
- (d) Ways and means committee of the senate; and
- (e) Ways and means committee of the house of representatives.

(2) The economic and revenue forecast work group shall provide technical support to the economic and revenue forecast council. Meetings of the economic and revenue forecast work group may be called by any member of the group for the purpose of assisting the economic and revenue forecast council, reviewing the state economic and revenue forecasts, or reviewing monthly revenue collection data or for any other purpose which may assist the economic and revenue forecast council. [1986 c 158 § 23; 1984 c 138 § 5. Formerly RCW 82.01.135.]

Chapter 82.36

MOTOR VEHICLE FUEL TAX

Sections	
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82.36.025	State-wide motor vehicle fuel taxes. (Effective April 1, 1992.)
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82.36.010 Definitions. For the purposes of this chapter:

(1) "Motor vehicle" means every vehicle that is in itself a self-propelled unit, equipped with solid rubber, hollow-cushion rubber, or pneumatic rubber tires and capable of being moved or operated upon a public highway, except motor vehicles used as motive power for or in conjunction with farm implements and machines or implements of husbandry;

(2) "Motor vehicle fuel" means gasoline or any other inflammable gas or liquid, by whatsoever name such gasoline, gas, or liquid may be known or sold, the chief use of which is as fuel for the propulsion of motor vehicles or motorboats;

(3) "Distributor" means every person who refines, manufactures, produces, or compounds motor vehicle fuel and sells, distributes, or in any manner uses it in this state; also every person engaged in business as a bona fide wholesale merchant dealing in motor vehicle fuel who either acquires it within the state from any person refining it within or importing it into the state, on

which the tax has not been paid, or imports it into this state and sells, distributes, or in any manner uses it in this state. For the purposes of liability for a county fuel tax, "distributor" has that meaning defined in the county ordinance imposing the tax;

(4) "Service station" means a place operated for the purpose of delivering motor vehicle fuel into the fuel tanks of motor vehicles;

(5) "Department" means the department of licensing;

(6) "Director" means the director of licensing;

(7) "Dealer" means any person engaged in the retail sale of liquid motor vehicle fuels;

(8) "Person" means every natural person, firm, partnership, association, or private or public corporation;

(9) "Highway" means every way or place open to the use of the public, as a matter of right, for purposes of vehicular travel;

(10) "Broker" means every person, other than a distributor, engaged in business as a broker, jobber, or wholesale merchant dealing in motor vehicle fuel or other petroleum products used or usable in propelling motor vehicles, or in other petroleum products which may be used in blending, compounding, or manufacturing of motor vehicle fuel;

(11) "Producer" means every person, other than a distributor, engaged in the business of producing motor vehicle fuel or other petroleum products used in, or which may be used in, the blending, compounding, or manufacturing of motor vehicle fuel;

(12) "Distribution" means all withdrawals of motor vehicle fuel for delivery to others, to retail service stations, or to unlicensed bulk storage plants;

(13) "Bulk storage plant" means, pursuant to the licensing provisions of RCW 82.36.070, any plant, under the control of the distributor, used for the storage of motor vehicle fuel to which no retail outlets are directly connected by pipe lines;

(14) "Marine fuel dealer" means any person engaged in the retail sale of liquid motor vehicle fuel whose place of business and or sale outlet is located upon a navigable waterway;

(15) "Alcohol" means alcohol that is produced from renewable resources;

(16) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. [1991 c 339 § 13; 1990 c 250 § 79; 1987 c 174 § 1; 1983 1st ex.s. c 49 § 25; 1981 c 342 § 1; 1979 c 158 § 223; 1977 ex.s. c 317 § 1; 1971 ex.s. c 156 § 1; 1967 c 153 § 1; 1965 ex.s. c 79 § 1; 1961 c 15 § 82.36.010. Prior: 1939 c 177 § 1; 1933 c 58 § 1; RRS § 8327-1; prior: 1921 c 173 § 1.]

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—1987 c 174: "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 June 1, 1987." [1987 c 174 § 8.]

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900 and 36.79.901.

Effective date—1981 c 342: "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 July 1, 1981. This act shall only take effect upon the passage of Senate Bills No. 3669 and 3699, and if Senate Bills No. 3669 and 3699 are not both enacted by the 1981 regular session of the legislature this amendatory act shall be null and void in its entirety." [1981 c 342 § 12.] Senate Bills No. 3669 and 3699 became 1981 c 315 and 1981 c 316, respectively.

Severability—1981 c 342: "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." [1981 c 342 § 13.]

Effective dates—1977 ex.s. c 317: "This 1977 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 on July 1, 1977, except for section 9, which shall take effect on September 1, 1977." [1977 ex.s. c 317 § 24.] Section 9 was the amendment to RCW 46.68.100 by 1977 ex.s. c 317.

Severability—1977 ex.s. c 317: "If any provision of this 1977 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." [1977 ex.s. c 317 § 23.]

82.36.025 State-wide motor vehicle fuel taxes. (Effective until April 1, 1992.) The motor vehicle fuel tax rate shall be computed as the sum of the tax rate provided in subsection (1) of this section and the additional tax rates provided in subsections (2) through (5) of this section.

(1) A motor vehicle fuel tax rate of seventeen cents per gallon shall apply to the sale, distribution, or use of motor vehicle fuel.

(2) An additional motor vehicle fuel tax rate of one-third cent per gallon shall apply to the sale, distribution, or use of motor vehicle fuel, and the proceeds from this additional tax rate, reduced by an amount equal to the sum of the payments under RCW 46.68.090 (1) (a) and (b) multiplied by the additional tax rate prescribed by this subsection divided by the motor vehicle fuel tax rate provided in this section, shall be deposited in the rural arterial trust account in the motor vehicle fund for expenditures under RCW 36.79.020.

(3) An additional motor vehicle fuel tax rate of one-third cent per gallon shall apply to the sale, distribution, or use of motor vehicle fuel, and the proceeds from this additional tax rate, reduced by an amount equal to the sum of the payments under RCW 46.68.090 (1) (a) and (b) multiplied by the additional tax rate prescribed by this subsection divided by the motor vehicle fuel tax rate provided in this section, shall be deposited in the urban arterial trust account in the motor vehicle fund.

(4) An additional motor vehicle fuel tax rate of one-third cent per gallon shall be applied to the sale, distribution, or use of motor vehicle fuel, and the proceeds from this additional tax rate, reduced by an amount equal to the sum of the payments under RCW 46.68.090 (1) (a) and (b) multiplied by the additional tax rate prescribed by this subsection divided by the motor vehicle fuel tax rate provided in this section, shall be deposited in the motor vehicle fund to be expended for highway purposes of the state as defined in RCW 46.68.130.

(5) An additional motor vehicle fuel tax rate of four cents per gallon from April 1, 1990, through March 31, 1991, and five cents per gallon from April 1, 1991, applies to the sale, distribution, or use of motor vehicle fuel. The proceeds from the additional tax rate under this subsection, reduced by an amount equal to the sum of the payments under RCW 46.68.090 (1) (a) and (b) multiplied by the additional tax rate prescribed by this subsection divided by the motor fuel tax rate provided in this section, shall be deposited in the motor vehicle fund and shall be distributed by the state treasurer according to RCW 46.68.095. [1990 c 42 § 101; 1983 1st ex.s. c 49 § 27; 1981 c 342 § 2; 1979 c 158 § 224; 1977 ex.s. c 317 § 6.]

Purpose of state and local transportation funding program—1990 c 42: "(1) The legislature finds that a new comprehensive funding program is required to maintain the state's commitment to the growing mobility needs of its citizens and commerce. The transportation funding program is intended to satisfy the following state policies and objectives:

(a) State-wide system: Provide for preservation of the existing state-wide system and improvements for current and expected capacity needs in rural, established urban, and growing suburban areas throughout the state;

(b) Local flexibility: Provide for necessary state highway improvements, as well as providing local governments with the option to use new funding sources for projects meeting local and regional needs;

(c) Multimodal: Provide a source of funds that may be used for multimodal transportation purposes;

(d) Program compatibility: Implement transportation facilities and services that are consistent with adopted land use and transportation plans and coordinated with recently authorized programs such as the act authorizing creation of transportation benefit districts and the local transportation act of 1988;

(e) Interjurisdictional cooperation: Encourage transportation planning and projects that are multijurisdictional in their conception, development, and benefit, recognizing that mobility problems do not respect jurisdictional boundaries;

(f) Public and private sector: Use a state, local, and private sector partnership that equitably shares the burden of meeting transportation needs.

(2) The legislature further recognizes that the revenues currently available to the state and to counties, cities, and transit authorities for highway, road, and street construction and preservation fall far short of the identified need. The 1988 Washington road jurisdiction study identified a state-wide funding shortfall of between \$14.6 and \$19.9 billion to bring existing roads to acceptable standards. The gap between identified transportation needs and available revenues continues to increase. A comprehensive transportation funding program is required to meet the current and anticipated future needs of this state.

(3) The legislature further recognizes the desirability of making certain changes in the collection and distribution of motor vehicle excise taxes with the following objectives: Simplifying administration and collection of the taxes including adoption of a predictable depreciation schedule for vehicles; simplifying the allocation of the taxes among various recipients; and the dedication of a portion of motor vehicle excise taxes for transportation purposes.

(4) The legislature, therefore, declares a need for the three-part funding program embodied in this act: (a) State-wide funding for highways, roads, and streets in urban and rural areas; (b) local option funding authority, available immediately, for the construction and preservation of roads, streets, and transit improvements and facilities; and (c) the creation of a multimodal transportation fund that is funded through dedication of a portion of motor vehicle excise tax. This funding program is intended, by targeting certain new revenues, to produce a significant increase in the overall capacity of the state, county, and city transportation systems to satisfy and efficiently accommodate the movement of people and goods." [1990 c 42 § 1.]

Headings—1990 c 42: "The index and part and section headings as used in this act do not constitute any part of the law." [1990 c 42 § 502.]

Severability—1990 c 42: "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." [1990 c 42 § 503.]

Effective dates—Application—Implementation—1990 c 42: "(1) Sections 101 through 104, 115 through 117, 201 through 214, 405 through 411, and 503, chapter 42, Laws of 1990 are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1990.

(2) Sections 105 through 114, chapter 42, Laws of 1990 shall take effect September 1, 1990. The additional fees in sections 105 through 108, chapter 42, Laws of 1990 apply for all motor vehicle registrations that expire August 31, 1991, and thereafter.

(3) Sections 301 through 303 and 305 through 328, chapter 42, Laws of 1990 shall take effect September 1, 1990, and apply to the purchase of vehicle registrations that expire August 31, 1991, and thereafter.

(4) Section 304, chapter 42, Laws of 1990 shall take effect July 1, 1991, and apply to all vehicles registered for the first time with an expiration date of June 30, 1992, and thereafter.

(5) The director of licensing may immediately take such steps as are necessary to ensure that the sections of chapter 42, Laws of 1990 are implemented on their effective dates.

(6) *Sections 401 through 404, chapter 42, Laws of 1990 shall take effect September 1, 1990, only if the bonds issued under RCW 47.56-.711 for the Spokane river toll bridge have been retired or fully defeased, and shall become null and void if the bonds have not been retired or fully defeased on that date." [1990 c 298 § 38; 1990 c 42 § 504.]

*Reviser's note: The bonds were fully defeased on June 1, 1990.

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900 and 36.79.901.

Effective date—Severability—1981 c 342: See notes following RCW 82.36.010.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

82.36.025 State-wide motor vehicle fuel taxes. (Effective April 1, 1992.) The motor vehicle fuel tax rate shall be computed as the sum of the tax rate provided in subsection (1) of this section and the additional tax rates provided in subsections (2) through (5) of this section.

(1) A motor vehicle fuel tax rate of seventeen cents per gallon shall apply to the sale, distribution, or use of motor vehicle fuel.

(2) An additional motor vehicle fuel tax rate of one-third cent per gallon shall apply to the sale, distribution, or use of motor vehicle fuel, and the proceeds from this additional tax rate, reduced by an amount equal to the sum of the payments under RCW 46.68.090 (1) (a), (b), and (c) multiplied by the additional tax rate prescribed by this subsection divided by the motor vehicle fuel tax rate provided in this section, shall be deposited in the rural arterial trust account in the motor vehicle fund for expenditures under RCW 36.79.020.

(3) An additional motor vehicle fuel tax rate of one-third cent per gallon shall apply to the sale, distribution, or use of motor vehicle fuel, and the proceeds from this additional tax rate, reduced by an amount equal to the sum of the payments under RCW 46.68.090 (1) (a), (b), and (c) multiplied by the additional tax rate prescribed by this subsection divided by the motor vehicle fuel tax rate provided in this section, shall be deposited in the urban arterial trust account in the motor vehicle fund.

(4) An additional motor vehicle fuel tax rate of one-third cent per gallon shall be applied to the sale, distribution, or use of motor vehicle fuel, and the proceeds

from this additional tax rate, reduced by an amount equal to the sum of the payments under RCW 46.68.090 (1) (a), (b), and (c) multiplied by the additional tax rate prescribed by this subsection divided by the motor vehicle fuel tax rate provided in this section, shall be deposited in the motor vehicle fund to be expended for highway purposes of the state as defined in RCW 46.68.130.

(5) An additional motor vehicle fuel tax rate of four cents per gallon from April 1, 1990, through March 31, 1991, and five cents per gallon from April 1, 1991, applies to the sale, distribution, or use of motor vehicle fuel. The proceeds from the additional tax rate under this subsection, reduced by an amount equal to the sum of the payments under RCW 46.68.090 (1) (a), (b), and (c) multiplied by the additional tax rate prescribed by this subsection divided by the motor fuel tax rate provided in this section, shall be deposited in the motor vehicle fund and shall be distributed by the state treasurer according to RCW 46.68.095. [1991 c 342 § 57; 1990 c 42 § 101; 1983 1st ex.s. c 49 § 27; 1981 c 342 § 2; 1979 c 158 § 224; 1977 ex.s. c 317 § 6.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

Purpose of state and local transportation funding program—1990 c 42: "(1) The legislature finds that a new comprehensive funding program is required to maintain the state's commitment to the growing mobility needs of its citizens and commerce. The transportation funding program is intended to satisfy the following state policies and objectives:

(a) State-wide system: Provide for preservation of the existing state-wide system and improvements for current and expected capacity needs in rural, established urban, and growing suburban areas throughout the state;

(b) Local flexibility: Provide for necessary state highway improvements, as well as providing local governments with the option to use new funding sources for projects meeting local and regional needs;

(c) Multimodal: Provide a source of funds that may be used for multimodal transportation purposes;

(d) Program compatibility: Implement transportation facilities and services that are consistent with adopted land use and transportation plans and coordinated with recently authorized programs such as the act authorizing creation of transportation benefit districts and the local transportation act of 1988;

(e) Interjurisdictional cooperation: Encourage transportation planning and projects that are multijurisdictional in their conception, development, and benefit, recognizing that mobility problems do not respect jurisdictional boundaries;

(f) Public and private sector: Use a state, local, and private sector partnership that equitably shares the burden of meeting transportation needs.

(2) The legislature further recognizes that the revenues currently available to the state and to counties, cities, and transit authorities for highway, road, and street construction and preservation fall far short of the identified need. The 1988 Washington road jurisdiction study identified a state-wide funding shortfall of between \$14.6 and \$19.9 billion to bring existing roads to acceptable standards. The gap between identified transportation needs and available revenues continues to increase. A comprehensive transportation funding program is required to meet the current and anticipated future needs of this state.

(3) The legislature further recognizes the desirability of making certain changes in the collection and distribution of motor vehicle excise taxes with the following objectives: Simplifying administration and collection of the taxes including adoption of a predictable depreciation schedule for vehicles; simplifying the allocation of the taxes among various recipients; and the dedication of a portion of motor vehicle excise taxes for transportation purposes.

(4) The legislature, therefore, declares a need for the three-part funding program embodied in this act: (a) State-wide funding for highways, roads, and streets in urban and rural areas; (b) local option funding authority, available immediately, for the construction and

preservation of roads, streets, and transit improvements and facilities; and (c) the creation of a multimodal transportation fund that is funded through dedication of a portion of motor vehicle excise tax. This funding program is intended, by targeting certain new revenues, to produce a significant increase in the overall capacity of the state, county, and city transportation systems to satisfy and efficiently accommodate the movement of people and goods." [1990 c 42 § 1.]

Headings—1990 c 42: "The index and part and section headings as used in this act do not constitute any part of the law." [1990 c 42 § 502.]

Severability—1990 c 42: "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." [1990 c 42 § 503.]

Effective dates—Application—Implementation—1990 c 42: "(1) Sections 101 through 104, 115 through 117, 201 through 214, 405 through 411, and 503, chapter 42, Laws of 1990 are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1990.

(2) Sections 105 through 114, chapter 42, Laws of 1990 shall take effect September 1, 1990. The additional fees in sections 105 through 108, chapter 42, Laws of 1990 apply for all motor vehicle registrations that expire August 31, 1991, and thereafter.

(3) Sections 301 through 303 and 305 through 328, chapter 42, Laws of 1990 shall take effect September 1, 1990, and apply to the purchase of vehicle registrations that expire August 31, 1991, and thereafter.

(4) Section 304, chapter 42, Laws of 1990 shall take effect July 1, 1991, and apply to all vehicles registered for the first time with an expiration date of June 30, 1992, and thereafter.

(5) The director of licensing may immediately take such steps as are necessary to ensure that the sections of chapter 42, Laws of 1990 are implemented on their effective dates.

(6) *Sections 401 through 404, chapter 42, Laws of 1990 shall take effect September 1, 1990, only if the bonds issued under RCW 47.56-.711 for the Spokane river toll bridge have been retired or fully defeased, and shall become null and void if the bonds have not been retired or fully defeased on that date." [1990 c 298 § 38; 1990 c 42 § 504.]

*Reviser's note: The bonds were fully defeased on June 1, 1990.

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900 and 36.79.901.

Effective date—Severability—1981 c 342: See notes following RCW 82.36.010.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

82.36.030 Monthly gallonage return—Default assessment—Penalty. Every distributor shall on or before the twenty-fifth day of each calendar month file, on forms furnished by the director, a statement signed by the distributor or his authorized agent showing the total number of gallons of motor vehicle fuel sold, distributed, or used by such distributor within this state during the preceding calendar month and, for counties within which an additional excise tax on motor vehicle fuel has been levied by that jurisdiction under RCW 82.80.010, showing the total number of gallons of motor vehicle fuel sold, distributed, or used by the distributor within the boundaries of the county during the preceding calendar month.

If any distributor fails to file such report, the director shall proceed forthwith to determine from the best available sources, the amount of motor vehicle fuel sold, distributed, or used by such distributor for the unreported period, and said determination shall be presumed to be correct for that period until proved by competent evidence to be otherwise. The director shall immediately

assess the excise tax in the amount so determined, adding thereto a penalty of ten percent for failure to report. Such penalty shall be cumulative of other penalties herein provided. All statements filed with the director, as required in this section, shall be public records.

If any distributor establishes by a fair preponderance of evidence that his or her failure to file a report by the due date was attributable to reasonable cause and was not intentional or willful, the department may waive the penalty imposed by this section. [1991 c 339 § 14; 1990 c 42 § 202; 1987 c 174 § 2; 1961 c 15 § 82.36.030. Prior: 1957 c 247 § 2; 1943 c 84 § 1; 1933 c 58 § 7; Rem. Supp. 1943 § 8327-7; prior: 1921 c 173 § 4.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Severability—1987 c 174: See note following RCW 82.36.010.

82.36.040 Payment of tax—Penalty for delinquency. If payment of any tax due is not received by the due date, there shall be assessed a penalty of two percent of the amount of the tax. [1991 c 339 § 2; 1989 c 378 § 24; 1987 c 174 § 4; 1977 c 28 § 1; 1961 c 15 § 82.36-.040. Prior: 1957 c 247 § 3; 1955 c 207 § 3; prior: 1953 c 151 § 1; 1943 c 84 § 2, part; 1933 c 58 § 8, part; Rem. Supp. 1943 § 8327-8, part; prior: 1923 c 81 § 3, part; 1921 c 173 § 5, part.]

Effective date—1987 c 174: See note following RCW 82.36.010.

82.36.045 Distributors—Tax reports—Deficiencies, failure to file, fraudulent filings—Penalties.

(1) If the department determines that the tax reported by a motor vehicle fuel distributor is deficient, the department shall assess the deficiency on the basis of information available to it, and shall add a penalty of two percent of the amount of the deficiency.

(2) If a distributor, whether licensed or not licensed as such, fails, neglects, or refuses to file a motor vehicle fuel tax report the department shall, on the basis of information available to it, determine the tax liability of the distributor for the period during which no report was filed. The department shall add the penalty provided in subsection (1) of this section to the tax. An assessment made by the department under this subsection or subsection (1) of this section is presumed to be correct. In any case, where the validity of the assessment is questioned, the burden is on the person who challenges the assessment to establish by a fair preponderance of evidence that it is erroneous or excessive, as the case may be.

(3) If a distributor files a false or fraudulent report with intent to evade the tax imposed by this chapter, the department shall add to the amount of deficiency a penalty equal to twenty-five percent of the deficiency, in addition to the penalty provided in subsections (1) and (2) of this section and all other penalties prescribed by law.

(4) Motor vehicle fuel tax, penalties, and interest payable under this chapter bears interest at the rate of one percent per month, or fraction thereof, from the first

day of the calendar month after the amount or any portion of it should have been paid until the date of payment. If a distributor establishes by a fair preponderance of evidence that the failure to pay the amount of tax due was attributable to reasonable cause and was not intentional or willful, the department may waive the penalty. The department may waive the interest when it determines the cost of processing or collection of the interest exceeds the amount of interest due.

(5) Except in the case of a fraudulent report, neglect or refusal to make a report, or failure to pay or to pay the proper amount, the department shall assess the deficiency under subsection (1) or (2) of this section within three years from the last day of the succeeding calendar month after the reporting period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires later.

(6) Except in the case of violations of filing a false or fraudulent report, if the department deems mitigation of penalties and interest to be reasonable and in the best interest of carrying out the purpose of this chapter, it may mitigate such assessments upon whatever terms the department deems proper, giving consideration to the degree and extent of the lack of records and reporting errors. The department may ascertain the facts regarding recordkeeping and payment penalties in lieu of more elaborate proceedings under this chapter.

(7) A distributor against whom an assessment is made under subsection (1) or (2) of this section may petition for a reassessment within thirty days after service upon the distributor of notice of the assessment. If the petition is not filed within the thirty-day period, the amount of the assessment becomes final at the expiration of that period.

If a petition for reassessment is filed within the thirty-day period, the department shall reconsider the assessment and, if the distributor has so requested in its petition, shall grant the distributor an oral hearing and give the distributor twenty days' notice of the time and place of the hearing. The department may continue the hearing from time to time. The decision of the department upon a petition for reassessment becomes final thirty days after service of notice upon the distributor.

An assessment made by the department becomes due and payable when it becomes final. If it is not paid to the department when due and payable, the department shall add a penalty of ten percent of the amount of the tax.

(8) In a suit brought to enforce the rights of the state under this chapter, the assessment showing the amount of taxes, penalties, interest, and cost unpaid to the state is prima facie evidence of the facts as shown.

(9) A notice of assessment required by this section must be served personally or by mail. If it is served by mail, service shall be made by deposit of the notice in the United States mail, postage prepaid, addressed to the distributor at the most current address furnished to the department. [1991 c 339 § 1.]

82.36.047 Assessments—Warrant; Lien. When an assessment becomes final in accordance with this chapter, the department may file with the clerk of any county within the state a warrant in the amount of the assessment of taxes, penalties, interest, and a filing fee of five dollars. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant the name of the distributor mentioned in the warrant, the amount of the tax, penalties, interest, and filing fee, and the date when the warrant was filed. The aggregate amount of the warrant as docketed becomes a lien upon the title to and interest in all real and personal property of the named person against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of the clerk. The warrant so docketed is sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law in the case of a civil judgment, wholly or partially unsatisfied. The clerk of the court is entitled to a filing fee of five dollars. [1991 c 339 § 4.]

82.36.120 Delinquency—Notice to debtors. If a distributor is delinquent in the payment of an obligation imposed under this chapter, the department may give notice of the amount of the delinquency by registered or certified mail to all persons having in their possession or under their control any credits or other personal property belonging to such distributor, or owing any debts to such distributor at the time of receipt by them of such notice. A person so notified shall neither transfer nor make any other disposition of such credits, personal property, or debts until the department consents to a transfer or other disposition. All persons so notified must, within twenty days after receipt of the notice, advise the department of any and all such credits, personal property, or debts in their possession, under their control or owing by them, as the case may be, and shall deliver upon demand the credits, personal property, or debts to the department or its duly authorized representative to be applied to the indebtedness involved.

If a person fails to answer the notice within the time prescribed by this section, it is lawful for the court, upon application of the department and after the time to answer the notice has expired, to render judgment by default against the person for the full amount claimed by the department in the notice to withhold and deliver, together with costs. [1991 c 339 § 3; 1961 c 15 § 82.36-.120. Prior: 1933 c 58 § 9, part; RRS § 8327-9, part.]

82.36.190 Revocation of licenses. The department shall revoke the license of any distributor refusing or neglecting to comply with any provision of this chapter. The department shall mail by registered mail addressed to such distributor at his last known address a notice of intention to cancel, which notice shall give the reason for cancellation. The cancellation shall become effective

without further notice if within ten days from the mailing of the notice the distributor has not made good his default or delinquency.

The department may cancel any license issued to any distributor, such cancellation to become effective sixty days from the date of receipt of the written request of such distributor for cancellation thereof, and the department may cancel the license of any distributor upon investigation and sixty days notice mailed to the last known address of such distributor if the department ascertains and finds that the person to whom the license was issued is no longer engaged in the business of a distributor, and has not been so engaged for the period of six months prior to such cancellation. No license shall be canceled upon the request of any distributor unless the distributor, prior to the date of such cancellation, pays to the state all taxes imposed by the provisions of this chapter, together with all penalties accruing by reason of any failure on the part of the distributor to make accurate reports or pay said taxes and penalties.

In the event the license of any distributor is canceled, and in the further event that the distributor pays to the state all excise taxes due and payable by him upon the receipt, sale, or use of motor vehicle fuel, together with any and all penalties accruing by reason of any failure on the part of the distributor to make accurate reports or pay said taxes and penalties, the department shall cancel the bond filed by the distributor. [1990 c 250 § 80; 1961 c 15 § 82.36.190. Prior: 1933 c 58 § 14; RRS § 8327-14.]

Severability—1990 c 250: See note following RCW 46.16.301.

82.36.225 Exemptions—Alcohol for use as fuel—Tax credit—Expiration of section. Alcohol of any proof that is sold in this state for use as fuel in motor vehicles, farm implements and machines, or implements of husbandry is exempt from the motor vehicle fuel tax under this chapter. In addition, a tax credit of sixty percent of the tax rate imposed by RCW 82.36.025 shall be given for every gallon of alcohol used in an alcohol-gasoline blend which contains at least nine and one-half percent or more by volume of alcohol: PROVIDED, That in no case may the tax credit claimed be greater than the tax due on the gasoline portion of the blended fuel.

This section shall expire on December 31, 1999. [1991 c 145 § 2; 1985 c 371 § 4; 1981 c 342 § 4; 1980 c 131 § 3.]

Effective date—Severability—1981 c 342: See notes following RCW 82.36.010.

82.36.440 State preempts tax field. The tax levied in this chapter is in lieu of any excise, privilege, or occupational tax upon the business of manufacturing, selling, or distributing motor vehicle fuel, and no city, town, county, township or other subdivision or municipal corporation of the state shall levy or collect any excise tax upon or measured by the sale, receipt, distribution, or use of motor vehicle fuel, except as provided in RCW 82.80.010 and 82.47.020. [1991 c 173 § 4; 1990 c 42 §

204; 1979 ex.s. c 181 § 5; 1961 c 15 § 82.36.440. Prior: 1933 c 58 § 23; RRS § 8327-23.]

Effective date—1991 c 173: See note following RCW 82.47.010.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—1979 ex.s. c 181: "This 1979 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 July 1, 1979." [1979 ex.s. c 181 § 10.]

Severability—1979 ex.s. c 181: "If any provision of this 1979 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." [1979 ex.s. c 181 § 8.]

Chapter 82.38

SPECIAL FUEL TAX ACT

Sections

82.38.040	Deliveries not requiring tax collection.
82.38.050	Tax liability on leased motor vehicles.
82.38.070	Refunds for worthless accounts receivable.
82.38.080	Exemptions.
82.38.090	Special fuel dealers', special fuel suppliers', and special fuel users' licenses—Collection of tax.
82.38.120	Issuance of license—Refusal—Posting—Display—Duration—Transferability.
82.38.150	Periodic tax reports.
82.38.170	Civil and statutory penalties—Deficiency assessments—Interest—Mitigation of assessments—Cancellation of vehicle registrations.
82.38.280	State preempts tax field.

82.38.040 Deliveries not requiring tax collection. The delivery of special fuel may be made without collecting the tax otherwise imposed when deliveries are made into vehicle refrigeration units, mixing units, or other equipment powered by separate motors from separate fuel tanks, on invoices showing the vehicle unit or license number and such other information as may be prescribed by the department. [1990 c 250 § 81; 1973 1st ex.s. c 156 § 2; 1971 ex.s. c 175 § 5.]

Severability—1990 c 250: See note following RCW 46.16.301.

82.38.050 Tax liability on leased motor vehicles. Except as otherwise provided in this chapter, every special fuel user shall be liable for the tax on special fuel used in motor vehicles leased to the user for thirty days or more and operated on the highways of this state to the same extent and in the same manner as special fuel used in his own motor vehicles and operated on the highways of this state: PROVIDED, That a lessor who is engaged regularly in the business of leasing or renting for compensation motor vehicles and equipment he owns without drivers to carriers or other lessees for interstate operation, may be deemed to be the special fuel user when he supplies or pays for the special fuel consumed in such vehicles, and such lessor may be issued a license as a special fuel user when application and bond have been properly filed with and approved by the department for such license. Any lessee may exclude motor vehicles of which he or she is the lessee from reports and liabilities pursuant to this chapter, but only if the motor vehicles

in question have been leased from a lessor holding a valid special fuel user's license.

Every such lessor shall file with the application for a special fuel user's license one copy of the lease form or service contract the lessor enters into with the various lessees of the lessor's motor vehicles. When the special fuel user's license has been secured, such lessor shall make and assign to each motor vehicle leased for interstate operation a photocopy of such license to be carried in the cab compartment of the motor vehicle and on which shall be typed or printed on the back the unit or motor number of the motor vehicle to which it is assigned and the name of the lessee. Such lessor shall be responsible for the proper use of such photocopy of the license issued and its return to the lessor with the motor vehicle to which it is assigned.

The lessor shall be responsible for fuel tax licensing and reporting, as required by this chapter, on the operation of all motor vehicles leased to others for less than thirty days. [1990 c 250 § 82; 1983 c 242 § 1; 1971 ex.s. c 175 § 6.]

Severability—1990 c 250: See note following RCW 46.16.301.

82.38.070 Refunds for worthless accounts receivable.

A special fuel dealer shall be entitled, under rules and regulations prescribed by the department, to a credit of the tax paid over to the department on those sales of special fuel for which the dealer has received no consideration from or on behalf of the purchaser, which have been declared by the dealer to be worthless accounts receivable, and which have been claimed as bad debts for federal income tax purposes. The amount of the tax refunded shall not exceed the amount of tax imposed by this chapter on such sales. If a refund has been granted under this section, any amounts collected for application against the accounts on which such a refund is based shall be reported with the first return filed after such collection, and the amount of refund received by the dealer based upon the collected amount shall be returned to the department. In the event the refund has not been paid, the amount of the refund requested by the dealer shall be adjusted by the department to reflect the decrease in the amount on which the claim is based. The department may require the dealer to submit periodical reports listing accounts which are delinquent for ninety days or more. [1990 c 250 § 83; 1971 ex.s. c 175 § 8.]

Severability—1990 c 250: See note following RCW 46.16.301.

82.38.080 Exemptions. There is exempted from the tax imposed by this chapter, the use of fuel for: (1) Street and highway construction and maintenance purposes in motor vehicles owned and operated by the state of Washington, or any county or municipality; (2) publicly owned fire fighting equipment; (3) special mobile equipment as defined in RCW 46.04.552; (4) power pumping units or other power take-off equipment of any motor vehicle which is accurately measured by metering devices that have been specifically approved by the department or which is established by either of the following formulae: (a) Pumping propane, or fuel or heating

oils or milk picked up from a farm or dairy farm storage tank by a power take-off unit on a delivery truck, at the rate of three-fourths of one gallon for each one thousand gallons of fuel delivered or milk picked up: **PROVIDED**, That claimant when presenting his claim to the department in accordance with the provisions of this chapter, shall provide to said claim, invoices of propane, or fuel or heating oil delivered, or such other appropriate information as may be required by the department to substantiate his claim; or (b) operating a power take-off unit on a cement mixer truck or a load compactor on a garbage truck at the rate of twenty-five percent of the total gallons of fuel used in such a truck; (5) motor vehicles owned and operated by the United States government; (6) heating purposes; (7) moving a motor vehicle on a public highway between two pieces of private property when said moving is incidental to the primary use of the motor vehicle; (8) transit services for only elderly or handicapped persons, or both, by a private, nonprofit transportation provider certified under chapter 81.66 RCW; and (9) notwithstanding any provision of law to the contrary, every urban passenger transportation system and carriers as defined by chapters 81.68 and 81.70 RCW shall be exempt from the provisions of this chapter requiring the payment of special fuel taxes. For the purposes of this section "urban passenger transportation system" means every transportation system, publicly or privately owned, having as its principal source of revenue the income from transporting persons for compensation by means of motor vehicles and/or trackless trolleys, each having a seating capacity for over fifteen persons over prescribed routes in such a manner that the routes of such motor vehicles and/or trackless trolleys, either alone or in conjunction with routes of other such motor vehicles and/or trackless trolleys subject to routing by the same transportation system, shall not extend for a distance exceeding twenty-five road miles beyond the corporate limits of the county in which the original starting points of such motor vehicles are located: **PROVIDED**, That no refunds or credits shall be granted on fuel used by any urban transportation vehicle or vehicle operated pursuant to chapters 81.68 and 81.70 RCW on any trip where any portion of said trip is more than twenty-five road miles beyond the corporate limits of the county in which said trip originated. [1990 c 185 § 1; 1983 c 108 § 4; 1979 c 40 § 4; 1973 c 42 § 1. Prior: 1972 ex.s. c 138 § 2; 1972 ex.s. c 49 § 1; 1971 ex.s. c 175 § 9.]

Effective date—1972 ex.s. c 138: See note following RCW 82.36.280.

82.38.090 Special fuel dealers', special fuel suppliers', and special fuel users' licenses—Collection of tax. It shall be unlawful for any person to act as a special fuel dealer, a special fuel supplier or a special fuel user in this state unless such person is the holder of an uncanceled special fuel dealer's, a special fuel supplier's or a special fuel user's license issued to him by the department. A special fuel supplier's license authorizes a person to sell special fuel without collecting the special fuel

tax to other suppliers and dealers holding valid special fuel licenses.

A special fuel dealer's license authorizes a person to deliver previously untaxed special fuel into the fuel supply tanks of motor vehicles, collect the special fuel tax on behalf of the state at the time of delivery, and remit the taxes collected to the state as provided herein. A licensed special fuel dealer may also deliver untaxed special fuel into bulk storage facilities of a licensed special fuel user without collecting the special fuel tax. Special fuel dealers and suppliers, when making deliveries of special fuel into bulk storage to any person not holding a valid special fuel license must collect the special fuel tax at time of delivery, unless the person to whom the delivery is made is specifically exempted from the tax as provided herein.

A special fuel user's license authorizes a person to purchase special fuel into bulk storage for use in motor vehicles either on or off the public highways of this state without payment of the special fuel tax at time of purchase. Holders of special fuel licenses are all subject to the bonding, reporting, tax payment, and record-keeping provisions of this chapter. All purchases of special fuel by a licensed special fuel user directly into the fuel supply tank of a motor vehicle are subject to the special fuel tax at time of purchase unless the purchase is made from an unattended keylock metered pump, cardrol, or such similar dispensing devices. Persons utilizing special fuel for heating purposes only are not required to be licensed.

Special fuel users operating motor vehicles in interstate commerce having two axles and a gross vehicle weight or registered gross vehicle weight not exceeding twenty-six thousand pounds are not required to be licensed. Special fuel users operating motor vehicles in interstate commerce having two axles and a gross vehicle weight or registered gross vehicle weight exceeding twenty-six thousand pounds, or having three or more axles regardless of weight, or a combination of vehicles, when the combination exceeds twenty-six thousand pounds gross vehicle weight, must comply with the licensing and reporting requirements of this chapter. A copy of the license must be carried in each motor vehicle entering this state from another state or province. [1991 c 339 § 6; 1990 c 250 § 84; 1986 c 29 § 2; 1979 c 40 § 5; 1971 ex.s. c 175 § 10.]

Severability—1990 c 250: See note following RCW 46.16.301.

82.38.120 Issuance of license—Refusal—Posting—Display—Duration—Transferability. Upon receipt and approval of an application and bond (if required), the department shall issue to the applicant a license to act as a special fuel dealer, a special fuel supplier, or a special fuel user: **PROVIDED**, That the department may refuse to issue a special fuel dealer's license, special fuel supplier's license, or a special fuel user's license to any person (1) who formerly held either type of license which, prior to the time of filing for application, has been revoked for cause; or (2) who is a subterfuge for the real party in interest whose license

prior to the time of filing for application, has been revoked for cause; or (3) who, as an individual licensee, or officer, director, owner, or managing employee of a non-individual licensee, has had a special fuel license revoked for cause; or (4) who has an unsatisfied debt to the state assessed under either chapter 82.36, 82.37, 82.38, or 46-.87 RCW; or (5) upon other sufficient cause being shown. Before such refusal, the department shall grant the applicant a hearing and shall grant him at least five days written notice of the time and place thereof.

The department shall determine from the information shown in the application or other investigation the kind and class of license to be issued.

All licenses shall be posted in a conspicuous place or kept available for inspection at the principal place of business of the owner thereof. License holders shall reproduce the license by photostat or other method and keep a copy on display for ready inspection at each additional place of business or other place of storage from which special fuel is sold, delivered or used and in each motor vehicle used by the license holder to transport special fuel purchased by him for resale, delivery or use. Every licensed special fuel user operating a motor vehicle registered in a jurisdiction other than this state shall reproduce the license and carry a photocopy thereof with each motor vehicle being operated upon the highways of this state.

A special fuel dealer or a special fuel supplier may use special fuel in motor vehicles owned or operated by them without securing a license as a special fuel user but they shall be subject to all other conditions, requirements and liabilities imposed herein upon a special fuel user.

The department shall furnish to each licensed special fuel supplier a list showing the name and address of each bonded special fuel dealer as of the beginning of each fiscal year, and shall thereafter during each year supplement such list monthly.

Each special fuel dealer's license, special fuel supplier's license, and special fuel user's license shall be valid until the expiration date if shown on the license, or until suspended or revoked for cause or otherwise canceled.

No special fuel dealer's license, special fuel supplier's license, or special fuel user's license shall be transferable. [1990 c 250 § 85; 1979 c 40 § 8; 1973 1st ex.s. c 156 § 5; 1971 ex.s. c 175 § 13.]

Severability—1990 c 250: See note following RCW 46.16.301.

82.38.150 Periodic tax reports. For the purpose of determining the amount of liability for the tax herein imposed each special fuel dealer and each special fuel user shall file tax reports with the department, on forms prescribed by the department. Special fuel dealers shall file the reports at the intervals as shown in the following schedule:

Estimated Yearly Tax Liability	Reporting Frequency
\$ 0 – \$100	Yearly
\$101 – 250	Semi-yearly
\$251 – 499	Quarterly
\$500 and over	Monthly

Special fuel users whose estimated yearly tax liability is two hundred fifty dollars or less, shall file a report yearly, and special fuel users whose estimated yearly tax liability is more than two hundred fifty dollars, shall file reports quarterly.

The department shall establish the reporting frequency for each applicant at the time the special fuel license is issued. If it becomes apparent that any special fuel licensee is not reporting in accordance with the above schedule, the department shall change the licensee's reporting frequency by giving thirty days' notice to the licensee by mail to his address of record. A report shall be filed with the department even though no special fuel was used, or tax is due, for the reporting period. Each tax report shall contain a declaration by the person making the same, to the effect that the statements contained therein are true and are made under penalties of perjury, which declaration shall have the same force and effect as a verification of the report and is in lieu of such verification. The report shall show such information as the department may reasonably require for the proper administration and enforcement of this chapter: **PROVIDED**, That if a special fuel dealer or special fuel user is also a special fuel supplier at a location where special fuel is delivered into the supply tank of a motor vehicle, and if separate storage is provided thereat from which special fuel is delivered or placed into fuel supply tanks of motor vehicles, the tax report to the department need not include inventory control data covering bulk storage from which wholesale distribution of special fuel is made. For counties within which an additional excise tax on special fuel has been levied by that jurisdiction under RCW 82.80.010, the report must show the quantities of special fuel sold, distributed, or withdrawn from bulk storage by the reporting dealer or user within the county's boundaries and the tax liability from its levy. The special fuel dealer or special fuel user shall file the report on or before the twenty-fifth day of the next succeeding calendar month following the period to which it relates.

Subject to the written approval of the department, tax reports may cover a period ending on a day other than the last day of the calendar month. Taxpayers granted approval to file reports in this manner will file such reports on or before the twenty-fifth day following the end of the reporting period. No change to this reporting period will be made without the written authorization of the department.

If the final filing date falls on a Saturday, Sunday, or legal holiday the next secular or business day shall be the final filing date. Such reports shall be considered filed or received on the date shown by the post office cancellation mark stamped upon an envelope containing such report properly addressed to the department, or on the date it was mailed if proof satisfactory to the department is available to establish the date it was mailed.

The department, if it deems it necessary in order to insure payment of the tax imposed by this chapter, or to

facilitate the administration of this chapter, has the authority to require the filing of reports and tax remittances at shorter intervals than one month if, in its opinion, an existing bond has become insufficient.

The department may permit any special fuel user whose sole use of special fuel is in motor vehicles or equipment exempt from tax as provided in RCW 82.38.075 and RCW 82.38.080 (1), (2), (3), (8), and (9), in lieu of the reports required in this section, to submit reports annually or as requested by the department, in such form as the department may require.

A special fuel user whose sole use of special fuel is for purposes other than the propulsion of motor vehicles upon the public highways of this state shall not be required to submit the reports required in this section. [1991 c 339 § 15; 1990 c 42 § 203; 1988 c 23 § 1; 1983 c 242 § 3; 1979 c 40 § 11; 1973 1st ex.s. c 156 § 6; 1971 ex.s. c 175 § 16.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—1988 c 23: "This act shall take effect January 1, 1989." [1988 c 23 § 2.]

82.38.170 Civil and statutory penalties—Deficiency assessments—Interest—Mitigation of assessments—Cancellation of vehicle registrations. (1) If any special fuel dealer or special fuel user fails to pay any taxes collected or due the state of Washington by said dealer or user within the time prescribed by RCW 82.38.150 and 82.38.160, said dealer or user shall pay in addition to such tax a penalty of ten percent of the amount thereof.

(2) If it be determined by the department that the tax reported by any special fuel dealer or special fuel user is deficient it shall proceed to assess the deficiency on the basis of information available to it and there shall be added to this deficiency a penalty of ten percent of the amount of the deficiency.

(3) If any special fuel dealer or special fuel user, whether or not he or she is licensed as such, fails, neglects, or refuses to file a special fuel tax report, the department shall, on the basis of information available to it, determine the tax liability of the special fuel dealer or the special fuel user for the period during which no report was filed, and to the tax as thus determined, the department shall add the penalty and interest provided in subsection (2) of this section. An assessment made by the department pursuant to this subsection or to subsection (2) of this section shall be presumed to be correct, and in any case where the validity of the assessment is drawn in question, the burden shall be on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive as the case may be.

(4) If any special fuel dealer or special fuel user shall establish by a fair preponderance of evidence that his or her failure to file a report or pay the proper amount of tax within the time prescribed was due to reasonable cause and was not intentional or willful, the department

may waive the penalty prescribed in subsections (1), (2), and (3) of this section.

(5) If any special fuel dealer or special fuel user shall file a false or fraudulent report with intent to evade the tax imposed by this chapter, there shall be added to the amount of deficiency determined by the department a penalty equal to twenty-five percent of the deficiency, in addition to the penalty provided in subsection (2) of this section and all other penalties prescribed by law.

(6) Any fuel tax, penalties, and interest payable under this chapter shall bear interest at the rate of one percent per month, or fraction thereof, from the first day of the calendar month after the amount or any portion thereof should have been paid until the date of payment: PROVIDED, That the department may waive the interest when it determines that the cost of processing the collection of the interest exceeds the amount of interest due.

(7) Except in the case of violations of filing a false or fraudulent report, if the department deems mitigation of penalties and interest to be reasonable and in the best interests of carrying out the purpose of this chapter, it may mitigate such assessments upon whatever terms the department deems proper, giving consideration to the degree and extent of the lack of records and reporting errors. The department may ascertain the facts regarding recordkeeping and payment penalties in lieu of more elaborate proceedings under this chapter.

(8) Except in the case of a fraudulent report or of neglect or refusal to make a report, every deficiency shall be assessed under subsection (2) of this section within three years from the twenty-fifth day of the next succeeding calendar month following the reporting period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later.

(9) Any special fuel dealer or special fuel user against whom an assessment is made under the provisions of subsections (2) or (3) of this section may petition for a reassessment thereof within thirty days after service upon the special fuel dealer or special fuel user of notice thereof. If such petition is not filed within such thirty day period, the amount of the assessment becomes final at the expiration thereof.

If a petition for reassessment is filed within the thirty day period, the department shall reconsider the assessment and, if the special fuel dealer or special fuel user has so requested in his or her petition, shall grant such special fuel dealer or special fuel user an oral hearing and give the special fuel dealer or special fuel user ten days' notice of the time and place thereof. The department may continue the hearing from time to time. The decision of the department upon a petition for reassessment shall become final thirty days after service upon the special fuel dealer or special fuel user of notice thereof.

Every assessment made by the department shall become due and payable at the time it becomes final and if not paid to the department when due and payable, there shall be added thereto a penalty of ten percent of the amount of the tax.

(10) Any notice of assessment required by this section shall be served personally or by mail; if by mail, service shall be made by depositing such notice in the United States mail, postage prepaid addressed to the special fuel dealer or special fuel user at his or her address as the same appears in the records of the department.

(11) Any licensee who has had their special fuel user license, special fuel dealer license, special fuel supplier license, or combination thereof revoked shall pay a one hundred dollar penalty prior to the issuance of a new license.

(12) Any person who, upon audit or investigation by the department, is found to have not paid special fuel taxes as required by this chapter shall be subject to cancellation of all vehicle registrations for vehicles utilizing special fuel as a means of propulsion. Any unexpired Washington tonnage on the vehicles in question may be transferred to a purchaser of the vehicles upon application to the department who shall hold such tonnage in its custody until a sale of the vehicle is made or the tonnage has expired. [1991 c 339 § 7; 1987 c 174 § 6; 1983 c 242 § 4; 1979 c 40 § 13; 1977 c 26 § 3; 1973 1st ex.s. c 156 § 7; 1972 ex.s. c 138 § 3; 1971 ex.s. c 175 § 18.]

Effective date—1987 c 174: See note following RCW 82.36.010.

Effective date—1972 ex.s. c 138: See note following RCW 82.36.280.

82.38.280 State preempts tax field. The tax levied in this chapter is in lieu of any excise, privilege, or occupational tax upon the business of manufacturing, selling, or distributing special fuel, and no city, town, county, township or other subdivision or municipal corporation of the state shall levy or collect any excise tax upon or measured by the sale, receipt, distribution, or use of special fuel, except as provided in RCW 82.80.010 and 82.47.020. [1991 c 173 § 5; 1990 c 42 § 205; 1979 ex.s. c 181 § 6; 1971 ex.s. c 175 § 29.]

Effective date—1991 c 173: See note following RCW 82.47.010.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—Severability—1979 ex.s. c 181: See notes following RCW 82.36.440.

Chapter 82.42 AIRCRAFT FUEL TAX

Sections

82.42.090 Tax proceeds—Disposition—Aeronautics account.
82.42.120 Mitigation of assessments.

82.42.090 Tax proceeds—Disposition—Aeronautics account. All moneys collected by the director from the aircraft fuel excise tax as provided in RCW 82.42.020 shall be transmitted to the state treasurer and shall be credited to the aeronautics account hereby created in the state treasury. Moneys collected from the consumer or user of aircraft fuel from either the use tax imposed by RCW 82.12.020 or the retail sales tax imposed by RCW 82.08.020 shall be transmitted to the state treasurer and credited to the state general fund.

[1991 1st sp.s. c 13 § 37; 1985 c 57 § 86; 1982 1st ex.s. c 25 § 8; 1967 ex.s. c 10 § 9.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

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

Severability—Effective date—1982 1st ex.s. c 25: See notes following RCW 82.42.010.

82.42.120 Mitigation of assessments. Except in the case of violations of filing a false or fraudulent report, if the department deems mitigation of penalties and interest to be reasonable and in the best interests of carrying out the purpose of this chapter, it may mitigate such assessments upon whatever terms the department deems proper, giving consideration to the degree and extent of the lack of records and reporting errors. The department may ascertain the facts regarding recordkeeping and payment penalties in lieu of more elaborate proceedings under this chapter. [1991 c 339 § 8.]

Chapter 82.44

MOTOR VEHICLE EXCISE TAX

Sections

82.44.010	Definitions.
82.44.013	Repealed.
82.44.020	Basic, additional, and clean air excise tax imposed— Exceptions—Liability of residents for out-of-state licensing.
82.44.040	Repealed.
82.44.041	Valuation of vehicles.
82.44.045	Repealed.
82.44.050	Repealed.
82.44.060	Payment of tax based on registration year—Transfer of ownership.
82.44.065	Appeal of valuation.
82.44.110	Disposition of revenue.
82.44.120	Refunds, collections of erroneous amounts— Claims—False statement, penalty.
82.44.150	Apportionment and distribution of motor vehicle excise taxes generally.
82.44.155	Distribution to cities and towns.
82.44.160	Distribution to municipal research council (as amended by 1990 c 42).
82.44.160	Distribution to municipal research council (as amended by 1990 c 104).
82.44.170	Computation of excise taxes when commingled with li- censing fees.
82.44.180	Transportation fund—Deposits and distributions.

82.44.010 Definitions. For the purposes of this chapter, unless [the] context otherwise requires:

(1) "Department" means the department of licensing.

(2) "Motor vehicle" means all motor vehicles, trailers and semitrailers used, or of the type designed primarily to be used, upon the public streets and highways, for the convenience or pleasure of the owner, or for the conveyance, for hire or otherwise, of persons or property, including fixed loads and facilities for human habitation; but shall not include (a) vehicles carrying exempt licenses, (b) dock and warehouse tractors and their cars or trailers, lumber carriers of the type known as spiders, and all other automotive equipment not designed primarily for use upon public streets, or highways, (c) motor vehicles or their trailers used entirely upon private

property, (d) mobile homes and travel trailers as defined in RCW 82.50.010, or (e) motor vehicles owned by non-resident military personnel of the armed forces of the United States stationed in the state of Washington provided personnel were also nonresident at the time of their entry into military service.

(3) "Truck-type power or trailing unit" means any vehicle that is subject to the fees under RCW 46.16.070 except vehicles with an unladen weight of six thousand pounds or less, RCW 46.16.079, 46.16.080, 46.16.085, or 46.16.090. [1990 c 42 § 301; 1979 c 107 § 10; 1971 ex.s. c 299 § 54; 1967 c 121 § 4; 1963 c 199 § 1; 1961 c 15 § 82.44.010. Prior: 1957 c 269 § 18; 1955 c 264 § 1; 1945 c 152 § 1; 1943 c 144 § 1; Rem. Supp. 1945 § 6312-115.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.44.013 Repealed. See Supplementary Table of disposition of Former RCW Sections, Supplement Volume 9A.

82.44.020 Basic, additional, and clean air excise tax imposed—Exceptions—Liability of residents for out-of-state licensing. (1) An excise tax is imposed for the privilege of using in the state any motor vehicle, except those operated under reciprocal agreements, the provisions of RCW 46.16.160 as now or hereafter amended, or dealer's licenses. The annual amount of such excise tax shall be two percent of the value of such vehicle.

(2) An additional excise tax is imposed, in addition to any other tax imposed by this section, for the privilege of using in the state any such motor vehicle, and the annual amount of such additional excise shall be two-tenths of one percent of the value of such vehicle.

(3) Effective with October 1992 motor vehicle registration expirations, a clean air excise tax is imposed in addition to any other tax imposed by this section for the privilege of using in the state any motor vehicle as defined in RCW 82.44.010, except that farm vehicles as defined in RCW 46.04.181 shall not be subject to the tax imposed by this subsection. The annual amount of the additional excise tax shall be two dollars and twenty-five cents. Effective with July 1994 motor vehicle registration expirations, the annual amount of additional excise tax shall be two dollars.

(4) In no case shall the total tax be less than two dollars except for proportionally registered vehicles.

(5) Washington residents, as defined in RCW 46.16-.028, who license motor vehicles in another state or foreign country and avoid Washington motor vehicle excise taxes are liable for such unpaid excise taxes. The department of revenue may assess and collect the unpaid excise taxes under chapter 82.32 RCW, including the penalties and interest provided therein. [1991 c 199 § 220; 1990 c 42 § 302; 1988 c 191 § 1. Prior: 1987 1st ex.s. c 9 § 5; 1987 c 260 § 1; 1983 2nd ex.s. c 3 § 19;

1982 2nd ex.s. c 14 § 2; 1982 1st ex.s. c 35 § 26; 1981 c 222 § 10; 1979 c 158 § 230; 1977 ex.s. c 332 § 1; 1963 c 199 § 2; 1961 c 15 § 82.44.020; prior: 1959 ex.s. c 3 § 19; 1957 c 261 § 10; 1943 c 144 § 2; Rem. Supp. 1943 § 6312-116; prior: 1937 c 228 § 2, part.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—**Severability**—**Captions not law**—1991 c 199: See RCW 70.94.904 through 70.94.906.

Purpose—**Headings**—**Severability**—**Effective dates**—**Application**—**Implementation**—1990 c 42: See notes following RCW 82.36.025.

Severability—**Effective date**—1987 1st ex.s. c 9: See notes following RCW 46.29.050.

Construction—**Severability**—**Effective dates**—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Effective date—**Applicability**—1982 2nd ex.s. c 14: See note following RCW 82.02.030.

Severability—**Effective dates**—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Effective date—1977 ex.s. c 332: "This 1977 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 on July 1, 1977." [1977 ex.s. c 332 § 4.]

Severability—1977 ex.s. c 332: "If any provision of this 1977 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." [1977 ex.s. c 332 § 3.]

82.44.040 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

82.44.041 Valuation of vehicles. (1) For the purpose of determining the tax under this chapter, the value of a truck-type power or trailing unit shall be the latest purchase price of the vehicle, excluding applicable federal excise taxes, state and local sales or use taxes, transportation or shipping costs, or preparatory or delivery costs, multiplied by the following percentage based on year of service of the vehicle since last sale. The latest purchase year shall be considered the first year of service.

YEAR OF SERVICE	PERCENTAGE
1	100
2	90
3	83
4	75
5	67
6	59
7	52
8	44
9	36
10	28
11	21
12	13
13 or older	10

(2) The reissuance of title and registration for a truck-type power or trailing unit because of the installation of body or special equipment shall be treated as a sale, and the value of the truck-type power or trailing unit at that time, as determined by the department from

such information as may be available, shall be considered the latest purchase price.

(3) For the purpose of determining the tax under this chapter, the value of a motor vehicle other than a truck-type power or trailing unit shall be the manufacturer's base suggested retail price of the vehicle when first offered for sale as a new vehicle, excluding any optional equipment, applicable federal excise taxes, state and local sales or use taxes, transportation or shipping costs, or preparatory or delivery costs, multiplied by the applicable percentage listed in this subsection based on year of service of the vehicle.

If the manufacturer's base suggested retail price is unavailable or otherwise unascertainable at the time of initial registration in this state, the department shall determine a value equivalent to a manufacturer's base suggested retail price as follows:

(a) The department shall determine a value using any information that may be available, including any guidebook, report, or compendium of recognized standing in the automotive industry or the selling price and year of sale of the vehicle. The department may use an appraisal by the county assessor. In valuing a vehicle for which the current value or selling price is not indicative of the value of similar vehicles of the same year and model, the department shall establish a value that more closely represents the average value of similar vehicles of the same year and model.

(b) The value determined in (a) of this subsection shall be divided by the applicable percentage listed in this subsection to establish a value equivalent to a manufacturer's base suggested retail price. The applicable percentage shall be based on the year of service of the vehicle for which the value is determined.

YEAR OF SERVICE	PERCENTAGE
1	100
2	100
3	91
4	83
5	74
6	65
7	57
8	48
9	40
10	31
11	22
12	14
13 or older	10

(4) For purposes of this chapter, value shall exclude value attributable to modifications of a motor vehicle and equipment that are designed to facilitate the use or operation of the motor vehicle by a handicapped person. [1990 c 42 § 303.]

Transitional valuation method and tax limitation—1990 c 42: "Notwithstanding any other provision of this act, motor vehicles and travel trailers and campers that are valued under the system in effect before September 1, 1990, shall be valued by using the initial valuation of the vehicle under chapter 82.44 or 82.50 RCW multiplied by the applicable percentage under section 303 or 323 of this act [RCW 82.44.041 or 82.50.425]. Before December 1992 vehicle license expirations, no tax may be imposed on any motor vehicle or travel trailer or

camper that is greater than one hundred ten percent of the tax imposed during the registration period in effect before September 1, 1990." [1990 c 42 § 326.] For codification of "this act" [1990 c 42], see Codification Tables, Supplement Volume 9A.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

82.44.045 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

82.44.050 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

82.44.060 Payment of tax based on registration year—Transfer of ownership. The excise tax hereby imposed shall be due and payable to the department or its agents at the time of registration of a motor vehicle. Whenever an application is made to the department or its agents for a license for a motor vehicle there shall be collected, in addition to the amount of the license fee or renewal license fee, the amount of the excise tax imposed by this chapter, and no dealer's license or license plates, and no license or license plates for a motor vehicle shall be issued unless such tax is paid in full. The excise tax hereby imposed shall be collected for each registration year. The excise tax upon a motor vehicle licensed for the first time in this state shall be levied for one full registration year commencing on the date of the calendar year designated by the department and ending on the same date of the next succeeding calendar year. For vehicles registered under chapter 46.87 RCW, proportional registration, and for vehicle dealer plates issued under chapter 46.70 RCW, the registration year is the period provided in those chapters: PROVIDED, That the tax shall in no case be less than two dollars except for proportionally registered vehicles.

A motor vehicle shall be deemed licensed for the first time in this state when such vehicle was not previously licensed by this state for the registration year immediately preceding the registration year in which the application for license is made or when the vehicle has been registered in another jurisdiction subsequent to any prior registration in this state.

No additional tax shall be imposed under this chapter upon any vehicle upon the transfer of ownership thereof if the tax imposed with respect to such vehicle has already been paid for the registration year or fraction of a registration year in which transfer of ownership occurs. [1990 c 42 § 304; 1981 c 222 § 12; 1979 c 158 § 233; 1975-'76 2nd ex.s. c 54 § 2; 1975 1st ex.s. c 118 § 14; 1963 c 199 § 4; 1961 c 15 § 82.44.060. Prior: 1957 c 269 § 15; 1955 c 139 § 25; 1943 c 144 § 6; Rem. Supp. 1943 § 6312-120; prior: 1937 c 228 § 5.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—1975-'76 2nd ex.s. c 54: "This 1976 amendatory act shall take effect on January 1, 1977." [1975-'76 2nd ex.s. c 54 § 3.]

Effective date—Severability—1975 1st ex.s. c 118: See notes following RCW 46.16.006.

82.44.065 Appeal of valuation. If the department determines a value for a motor vehicle under RCW 82.44.041 equivalent to a manufacturer's base suggested retail price or the value of a truck-type power or trailing unit under RCW 82.44.041(2), any person who pays the tax under this chapter for that vehicle may appeal the valuation to the department under chapter 34.05 RCW. If the taxpayer is successful on appeal, the department shall refund the excess tax in the manner provided in RCW 82.44.120. [1990 c 42 § 305.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

82.44.110 Disposition of revenue. The county auditor shall regularly, when remitting license fee receipts, pay over and account to the director of licensing for the excise taxes collected under the provisions of this chapter. The director shall forthwith transmit the excise taxes to the state treasurer.

(1) The state treasurer shall deposit the excise taxes collected under RCW 82.44.020(1) as follows:

(a) 1.60 percent into the motor vehicle fund to defray administrative and other expenses incurred by the department in the collection of the excise tax.

(b) 8.15 percent into the Puget Sound capital construction account in the motor vehicle fund.

(c) 4.07 percent into the Puget Sound ferry operations account in the motor vehicle fund.

(d) 8.83 percent into the general fund to be distributed under RCW 82.44.155.

(e) 4.75 percent into the municipal sales and use tax equalization account in the general fund created in RCW 82.14.210.

(f) 1.60 percent into the county sales and use tax equalization account in the general fund created in RCW 82.14.200.

(g) 62.6440 percent into the general fund through June 30, 1993, 57.6440 percent into the general fund beginning July 1, 1993, and 66 percent into the general fund beginning January 1, 1994.

(h) 5 percent into the transportation fund created in RCW 82.44.180 beginning July 1, 1993.

(i) 5.9686 percent into the county criminal justice assistance account created in RCW 82.14.310 through December 31, 1993.

(j) 1.1937 percent into the municipal criminal justice assistance account for distribution under RCW 82.14.320 through December 31, 1993.

(k) 1.1937 percent into the municipal criminal justice assistance account for distribution under RCW 82.14.330 through December 31, 1993.

(2) The state treasurer shall deposit the excise taxes collected under RCW 82.44.020(2) into the transportation fund.

(3) The state treasurer shall deposit the excise tax imposed by RCW 82.44.020(3) into the air pollution control account created by RCW 70.94.015. [1991 c 199 § 221; 1990 2nd ex.s. c 1 § 801; 1990 c 42 § 306; 1987

1st ex.s. c 9 § 7; 1982 1st ex.s. c 35 § 12; 1979 c 158 § 235; 1977 ex.s. c 332 § 2; 1974 ex.s. c 54 § 3; 1967 c 121 § 1; 1961 c 15 § 82.44.110. Prior: 1957 c 128 § 1; 1955 c 259 § 6; 1943 c 144 § 10; Rem. Supp. 1943 § 6312-124; prior: 1937 c 228 § 9.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—**Severability**—**Captions not law**—1991 c 199: See RCW 70.94.904 through 70.94.906.

Effective dates—1990 2nd ex.s. c 1: See note following RCW 84.52.010.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Purpose—**Headings**—**Severability**—**Effective dates**—**Application**—**Implementation**—1990 c 42: See notes following RCW 82.36.025.

Severability—**Effective date**—1987 1st ex.s. c 9: See notes following RCW 46.29.050.

Severability—**Effective dates**—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Effective date—**Severability**—1977 ex.s. c 332: See notes following RCW 82.44.020.

Effective dates—1974 ex.s. c 54: "Section 6 of this 1974 amendatory act shall not take effect until June 30, 1981, and the remainder of 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." [1974 ex.s. c 54 § 13.]

Severability—1974 ex.s. c 54: "If any provision of this 1974 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." [1974 ex.s. c 54 § 14.]

82.44.120 Refunds, collections of erroneous amounts—**Claims**—**False statement, penalty.** Whenever any person has paid a motor vehicle license fee, and together therewith has paid an excise tax imposed under the provisions of this chapter, and the director of licensing determines that the payor is entitled to a refund of the entire amount of the license fee as provided by law, then the payor shall also be entitled to a refund of the entire excise tax collected under the provisions of this chapter. In case the director determines that any person is entitled to a refund of only a part of the license fee so paid, the payor shall be entitled to a refund of the difference, if any, between the excise tax collected and that which should have been collected.

In case no claim is to be made for the refund of the license fee or any part thereof but claim is made by any person that he or she has paid an erroneously excessive amount of excise tax, the department shall determine in the manner generally provided in this chapter the amount of such excess, if any, that has been paid and shall certify to the state treasurer that such person is entitled to a refund in such amount.

In any case where due to error, a person has been required to pay an excise tax pursuant to this chapter and a vehicle license fee pursuant to Title 46 RCW which amounts to an overpayment of ten dollars or more, such person shall be entitled to a refund of the entire amount of such overpayment, regardless of whether or not a refund of the overpayment has been requested. Conversely, if due to error, the department or its agents has failed to collect the full amount of the license fee and excise tax due, which underpayment is in the amount of ten dollars

or more, the department shall charge and collect such additional amount as will constitute full payment of the tax.

If the department approves the claim it shall notify the state treasurer to that effect, and the treasurer shall make such approved refunds and the other refunds herein provided for from the general fund and shall mail or deliver the same to the person entitled thereto.

Any person making any false statement under which he or she obtains any amount of refund to which he or she is not entitled under the provisions of this section is guilty of a gross misdemeanor. [1990 c 42 § 307; 1989 c 68 § 2; 1983 c 26 § 3; 1979 c 120 § 2; 1975 1st ex.s. c 278 § 95; 1974 ex.s. c 54 § 4; 1967 c 121 § 2; 1963 c 199 § 5; 1961 c 15 § 82.44.120. Prior: 1949 c 196 § 18; 1945 c 152 § 3; 1943 c 144 § 11; Rem. Supp. 1949 § 6312-125.]

Purpose—**Headings**—**Severability**—**Effective dates**—**Application**—**Implementation**—1990 c 42: See notes following RCW 82.36.025.

Construction—**Severability**—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Severability—**Effective dates**—1974 ex.s. c 54: See notes following RCW 82.44.110.

82.44.150 Apportionment and distribution of motor vehicle excise taxes generally. (1) The director of licensing shall, on the twenty-fifth day of February, May, August, and November of each year, advise the state treasurer of the total amount of motor vehicle excise taxes imposed by RCW 82.44.020 (1) and (2) remitted to the department during the preceding calendar quarter ending on the last day of March, June, September, and December, respectively, except for those payable under RCW 82.44.030, from motor vehicle owners residing within each municipality which has levied a tax under RCW 35.58.273, which amount of excise taxes shall be determined by the director as follows:

The total amount of motor vehicle excise taxes remitted to the department, except those payable under RCW 82.44.020(3) and 82.44.030, from each county shall be multiplied by a fraction, the numerator of which is the population of the municipality residing in such county, and the denominator of which is the total population of the county in which such municipality or portion thereof is located. The product of this computation shall be the amount of excise taxes from motor vehicle owners residing within such municipality or portion thereof. Where the municipality levying a tax under RCW 35.58.273 is located in more than one county, the above computation shall be made by county, and the combined products shall provide the total amount of motor vehicle excise taxes from motor vehicle owners residing in the municipality as a whole. Population figures required for these computations shall be supplied to the director by the office of financial management, who shall adjust the fraction annually.

(2) On the first day of the months of January, April, July, and October of each year, the state treasurer based upon information provided by the department shall, from motor vehicle excise taxes deposited in the general

fund, under *RCW 82.44.110(7), make the following deposits:

(a) To the high capacity transportation account created in RCW 47.78.010, a sum equal to four and five-tenths percent of the special excise tax levied under RCW 35.58.273 by those municipalities authorized to levy a special excise tax within (i) each county with a population of two hundred ten thousand or more and (ii) each county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand except for those counties that do not border a county with a population as described in subsection (i) of this subsection;

(b) To the central Puget Sound public transportation account created in RCW 82.44.180, for revenues distributed after December 31, 1992, within a county with a population of one million or more and a county with a population of from two hundred thousand to less than one million bordering a county with a population of one million or more, a sum equal to the difference between (i) the special excise tax levied and collected under RCW 35.58.273 by those municipalities authorized to levy and collect a special excise tax subject to the requirements of subsections (3) and (4) of this section and (ii) the special excise tax that the municipality would otherwise have been eligible to levy and collect at a tax rate of .815 percent and been able to match with locally generated tax revenues, other than the excise tax imposed under RCW 35.58.273, budgeted for any public transportation purpose. Before this deposit, the sum shall be reduced by an amount equal to the amount distributed under (a) of this subsection for each of the municipalities within the counties to which this subsection (2)(b) applies; however, any transfer under this subsection (2)(b) must be greater than zero;

(c) To the public transportation systems account created in RCW 82.44.180, for revenues distributed after December 31, 1992, within counties not described in (b) of this subsection, a sum equal to the difference between (i) the special excise tax levied and collected under RCW 35.58.273 by those municipalities authorized to levy and collect a special excise tax subject to the requirements of subsections (3) and (4) of this section and (ii) the special excise tax that the municipality would otherwise have been eligible to levy and collect at a tax rate of .815 percent and been able to match with locally generated tax revenues, other than the excise tax imposed under RCW 35.58.273, budgeted for any public transportation purpose. Before this deposit, the sum shall be reduced by an amount equal to the amount distributed under (a) of this subsection for each of the municipalities within the counties to which this subsection (2)(c) applies; however, any transfer under this subsection (2)(c) must be greater than zero; and

(d) To the transportation fund created in RCW 82.44.180, for revenues distributed after June 30, 1991, a sum equal to the difference between (i) the special excise tax levied and collected under RCW 35.58.273 by those municipalities authorized to levy and collect a special excise tax subject to the requirements of subsections (3) and (4) of this section and (ii) the special excise tax

that the municipality would otherwise have been eligible to levy and collect at a tax rate of .815 percent notwithstanding the requirements set forth in subsections (3) through (6) of this section, reduced by an amount equal to distributions made under (a), (b), and (c) of this subsection.

(3) On the first day of the months of January, April, July, and October of each year, the state treasurer, based upon information provided by the department, shall remit motor vehicle excise tax revenues imposed and collected under RCW 35.58.273 as follows:

(a) The amount required to be remitted by the state treasurer to the treasurer of any municipality levying the tax shall not exceed in any calendar year the amount of locally-generated tax revenues, excluding the excise tax imposed under RCW 35.58.273 for the purposes of this section, which shall have been budgeted by the municipality to be collected in such calendar year for any public transportation purposes including but not limited to operating costs, capital costs, and debt service on general obligation or revenue bonds issued for these purposes; and

(b) In no event may the amount remitted in a single calendar quarter exceed the amount collected on behalf of the municipality under RCW 35.58.273 during the calendar quarter next preceding the immediately preceding quarter.

(4) At the close of each calendar year accounting period, but not later than April 1, each municipality that has received motor vehicle excise taxes under subsection (3) of this section shall transmit to the director of licensing and the state auditor a written report showing by source the previous year's budgeted tax revenues for public transportation purposes as compared to actual collections. Any municipality that has not submitted the report by April 1 shall cease to be eligible to receive motor vehicle excise taxes under subsection (3) of this section until the report is received by the director of licensing. If a municipality has received more or less money under subsection (3) of this section for the period covered by the report than it is entitled to receive by reason of its locally-generated collected tax revenues, the director of licensing shall, during the next ensuing quarter that the municipality is eligible to receive motor vehicle excise tax funds, increase or decrease the amount to be remitted in an amount equal to the difference between the locally-generated budgeted tax revenues and the locally-generated collected tax revenues. In no event may the amount remitted for a calendar year exceed the amount collected on behalf of the municipality under RCW 35.58.273 during that same calendar year. At the time of the next fiscal audit of each municipality, the state auditor shall verify the accuracy of the report submitted and notify the director of licensing of any discrepancies.

(5) The motor vehicle excise taxes imposed under RCW 35.58.273 and required to be remitted under this section shall be remitted without legislative appropriation.

(6) Any municipality levying and collecting a tax under RCW 35.58.273 which does not have an operating,

public transit system or a contract for public transportation services in effect within one year from the initial effective date of the tax shall return to the state treasurer all motor vehicle excise taxes received under subsection (3) of this section. [1991 c 309 § 5; 1991 c 199 § 222; (1991 c 363 § 159 repealed by 1991 c 309 § 6); 1990 c 42 § 308; 1988 c 18 § 1. Prior: 1987 1st ex.s. c 9 § 8; 1987 c 428 § 3; prior: 1982 1st ex.s. c 49 § 20; 1982 1st ex.s. c 35 § 13; 1979 ex.s. c 175 § 4; 1979 c 158 § 238; 1974 ex.s. c 54 § 5; 1972 ex.s. c 87 § 1; prior: 1971 ex.s. c 199 § 2; 1971 ex.s. c 80 § 1; 1969 ex.s. c 255 § 15; 1961 c 15 § 82.44.150; prior: 1957 c 175 § 12; 1945 c 152 § 5; 1943 c 144 § 14; Rem. Supp. 1945 § 6312-128.]

Reviser's note: (1) This section was amended by 1991 c 199 § 222 and by 1991 c 309 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

* (2) RCW 82.44.110(7) is now RCW 82.44.110(1)(g) due to the changes made in 1991 c 199 § 221.

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Transitional distributions—1990 c 42: "Distributions under RCW 82.44.150 for excise taxes collected under RCW 35.58.273, before September 1, 1990, shall be under the provisions of RCW 82.44.150 as it existed before September 1, 1990." [1990 c 42 § 327.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Severability—Effective date—1987 1st ex.s. c 9: See notes following RCW 46.29.050.

Effective date—1987 c 428: See note following RCW 47.78.010.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Effective date—1979 ex.s. c 175: "Section 4 of this act shall take effect on January 1, 1980." [1979 ex.s. c 175 § 6.]

Severability—Effective dates—1974 ex.s. c 54: See notes following RCW 82.44.110.

82.44.155 Distribution to cities and towns. When distributions are made under RCW 82.44.150, the state treasurer shall apportion and distribute the motor vehicle excise taxes deposited into the general fund under *RCW 82.44.110(4) to the cities and towns ratably on the basis of population as last determined by the office of financial management. When so apportioned, the amount payable to each such city and town shall be transmitted to the city treasurer thereof, and shall be used by the city or town for the purposes of police and fire protection and the preservation of the public health in the city or town, and not otherwise. If it is adjudged that revenue derived from the excise taxes imposed by RCW 82.44.020 (1) and (2) cannot lawfully be apportioned or distributed to cities or towns, all moneys directed by this section to be apportioned and distributed to cities and towns shall be credited and transferred to the state general fund. [1991 c 199 § 223; 1990 c 42 § 309.]

***Reviser's note:** RCW 82.44.110(4) is now RCW 82.44.110(1)(d) due to the changes made in 1991 c 199 § 221.

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

82.44.160 Distribution to municipal research council (as amended by 1990 c 42). Before distributing moneys to the cities and towns from the general fund, as provided in ~~((RCW 82.44.150))~~ RCW 82.44.155, and from the municipal sales and use tax equalization account, as provided in RCW 82.14.210, the state treasurer shall, on the first day of July of each year, make an annual deduction therefrom of a sum equal to one-half of the biennial appropriation made pursuant to this section, which amount shall be at least seven cents per capita of the population of all cities or towns as legally certified on that date, determined as provided in ~~((said section))~~ RCW 82.44.150, which sum shall be apportioned and transmitted to the municipal research council, herein created. Sixty-five percent of the annual deduction shall be from the distribution to cities and towns under RCW 82.44.155, and thirty-five percent of the annual deduction shall be from the distribution to the municipal sales and use tax equalization account under RCW 82.14.210. The municipal research council may contract with and allocate moneys to any state agency, educational institution, or private consulting firm, which in its judgment is qualified to carry on a municipal research and service program. Moneys may be utilized to match federal funds available for technical research and service programs to cities and towns. Moneys allocated shall be used for studies and research in municipal government, publications, educational, conferences, and attendance thereat, and in furnishing technical, consultative, and field services to cities and towns in problems relating to planning, public health, municipal sanitation, fire protection, law enforcement, postwar improvements, and public works, and in all matters relating to city and town government. The programs shall be carried on and all expenditures shall be made in cooperation with the cities and towns of the state acting through the Association of Washington Cities by its board of directors which is hereby recognized as their official agency or instrumentality.

Funds appropriated to the municipal research council shall be kept in the treasury in the general fund, and shall be disbursed by warrant or check to contracting parties on invoices or vouchers certified by the ~~((chairman))~~ chair of the municipal research council or his or her designee. Payments to public agencies may be made in advance of actual work contracted for, in the discretion of the council.

Sixty-five percent of any moneys remaining unexpended or uncontracted for by the municipal research council at the end of any fiscal biennium shall be returned to the general fund and be paid to cities and towns under ~~((the provisions of RCW 82.44.150))~~ RCW 82.44.155. The remaining thirty-five percent shall be deposited into the municipal sales and use tax equalization account. [1990 c 42 § 310; 1974 ex.s. c 54 § 7; 1969 c 108 § 1; 1961 c 115 § 1; 1961 c 15 § 82.44.160. Prior: 1945 c 54 § 1; Rem. Supp. 1945 § 6312-128a.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

82.44.160 Distribution to municipal research council (as amended by 1990 c 104). Before distributing or paying moneys to the cities and towns from the general fund ~~((as))~~ on the first day of July of each year, under the formula provided in RCW 82.44.150, the state treasurer shall ~~((on the first day of July of each year, make an annual deduction therefrom of))~~ deduct from these moneys a sum equal to one-half of the biennial appropriation made ~~((pursuant to this section, which))~~ to the municipal research council.

The amount that is appropriated to the municipal research council shall be at least seven cents per capita of the population of all cities or towns as ~~((legally certified on that date, determined as provided in said section, which sum shall be apportioned and transmitted to the municipal research council, herein created. The municipal research council may contract with and allocate moneys to any state agency, educational institution, or private consulting firm, which in its judgment is qualified to carry on a municipal research and service program. Moneys may be utilized to match federal funds available for technical research and service programs to cities and towns. Moneys allocated~~

shall be used for studies and research in municipal government, publications, educational, conferences, and attendance thereat, and in furnishing technical, consultative, and field services to cities and towns in problems relating to planning, public health, municipal sanitation, fire protection, law enforcement, postwar improvements, and public works; and in all matters relating to city and town government. The programs shall be carried on and all expenditures shall be made in cooperation with the cities and towns of the state acting through the Association of Washington Cities by its board of directors which is hereby recognized as their official agency or instrumentality.

Funds) last determined by the office of financial management. Moneys appropriated to the municipal research council shall be kept in the treasury in the general fund((, and)). Expenditures of the municipal research council, including council expenses and contract payments, shall be disbursed by warrant or check ((to contracting parties or)) from invoices or vouchers certified by the chairman of the municipal research council or ((his)) a designee. Payments to public agencies may be made in advance of actual work contracted for, in the discretion of the council.

Any moneys remaining unexpended or uncontracted for by the municipal research council at the end of any fiscal biennium shall be returned to the general fund and be paid to cities and towns under the provisions of RCW 82.44.150. [1990 c 104 § 3; 1974 ex.s. c 54 § 7; 1969 c 108 § 1; 1961 c 115 § 1; 1961 c 15 § 82.44.160. Prior: 1945 c 54 § 1; Rem. Supp. 1945 § 6312-128a.]

Reviser's note: RCW 82.44.160 was amended twice during the 1990 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Severability—Effective dates—1974 ex.s. c 54: See notes following RCW 82.44.110.

Severability—1969 c 108: "If any amendment or provision of this 1969 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this act, or the application of the amendment or provision to other persons or circumstances is not affected." [1969 c 108 § 3.]

Effective date—1969 c 108: "The effective date of this 1969 amendatory act is July 1, 1969." [1969 c 108 § 4.]

Municipal research council: Chapter 43.110 RCW.

82.44.170 Computation of excise taxes when commingled with licensing fees. For each IRP jurisdiction that cannot report to the director the sums of dollars that are collected for the motor vehicle excise tax pursuant to chapter 82.44 RCW separately from other vehicle licensing fees pursuant to RCW 46.16.070 and 46.16.085, the director shall distribute thirty-three percent of the total fees collected as reported on the IRP vehicle registration recap information forwarded to the director by such jurisdiction pursuant to RCW 82.44.110, until such time as such jurisdiction begins reporting excise tax amounts separately from other vehicle licensing fees. The remainder of the fees collected shall be distributed in accordance with RCW 46.68.035. [1990 c 42 § 311; 1987 c 244 § 56; 1985 c 380 § 22.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective dates—1987 c 244: See note following RCW 46.12.020.

Effective date—1986 c 18; 1985 c 380: See RCW 46.87.901.

Severability—1985 c 380: See RCW 46.87.900.

82.44.180 Transportation fund—Deposits and distributions. (1) The transportation fund is created in the state treasury. Revenues under RCW 82.44.020 (1) and (2), 82.44.110, 82.44.150, and the surcharge under RCW 82.50.510 shall be deposited into the fund as provided in those sections.

Moneys in the fund may be spent only after appropriation. Expenditures from the fund may be used only for transportation purposes.

(2) There is hereby created the central Puget Sound public transportation account within the transportation fund. Moneys deposited into the account under RCW 82.44.150(2)(b) shall be expended within the three county region from which the funds are derived, solely for:

(a) Development of high capacity transportation systems as defined in RCW 81.104.010;

(b) Development of high occupancy vehicle lanes and related facilities as defined in RCW 81.100.020; and

(c) Public transportation system contributions required to fund projects approved by the transportation improvement board.

(3) There is hereby created the public transportation systems account within the transportation fund. Moneys deposited into the account under RCW 82.44.150(2)(c) shall be available to the public transportation system from which the funds are derived, solely for:

(a) Development of high capacity transportation systems as defined in RCW 81.104.010;

(b) Development of high occupancy vehicle lanes and related facilities as defined in RCW 81.100.020;

(c) Other public transportation system-related roadway projects on state highways, county roads, or city streets; and

(d) Public transportation system contributions required to fund projects approved by the transportation improvement board. [1991 c 199 § 224; 1990 c 42 § 312.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Chapter 82.45

EXCISE TAX ON REAL ESTATE SALES

Sections

82.45.090	Payment of tax and fee—Evidence of payment—Recording.
82.45.180	Disposition of proceeds—Support of common schools—Collection of fee.

82.45.090 Payment of tax and fee—Evidence of payment—Recording. The tax imposed by this chapter shall be paid to and collected by the treasurer of the county within which is located the real property which was sold, said treasurer acting as agent for the state. The county treasurer shall cause a stamp evidencing satisfaction of the lien to be affixed to the instrument of sale or conveyance prior to its recording or to the real estate excise tax affidavit in the case of used mobile home sales and used floating home sales. A receipt issued by the county treasurer for the payment of the tax

imposed under this chapter shall be evidence of the satisfaction of the lien imposed hereunder and may be recorded in the manner prescribed for recording satisfactions of mortgages. No instrument of sale or conveyance evidencing a sale subject to the tax shall be accepted by the county auditor for filing or recording until the tax shall have been paid and the stamp affixed thereto; in case the tax is not due on the transfer, the instrument shall not be so accepted until suitable notation of such fact has been made on the instrument by the treasurer. [1991 c 327 § 6; 1990 c 171 § 7; 1984 c 192 § 2; 1980 c 154 § 4; 1979 ex.s. c 266 § 2; 1969 ex.s. c 223 § 28A.45.090. Prior: 1951 2nd ex.s. c 19 § 4; 1951 1st ex.s. c 11 § 11. Formerly RCW 28A.45.090, 28.45.090.]

Construction—Severability—Effective date—1991 c 327: See RCW 59.21.901 through 59.21.903.

Effective date—1990 c 171 §§ 6, 7, 8: See note following RCW 59.21.060.

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter digest.

82.45.180 Disposition of proceeds—Support of common schools—Collection of fee. The county treasurer shall collect a two-dollar fee on all transactions required by this chapter where the transaction does not require the payment of tax. The county treasurer shall place one percent of the proceeds of the tax imposed by this chapter and the treasurer's fee in the county current expense fund to defray costs of collection and shall pay over to the state treasurer and account to the department of revenue for the remainder of the proceeds at the same time the county treasurer remits funds to the state under RCW 84.56.280. The proceeds of the tax on any sale occurring prior to September 1, 1981, when the proceeds have not been certified by an educational service district superintendent for school districts prior to September 1, 1981, shall be included in the amount remitted to the state treasurer. The state treasurer shall deposit the proceeds in the general fund for the support of the common schools. [1991 c 245 § 15; 1982 c 176 § 2; 1981 c 167 § 3; 1980 c 154 § 6.]

Audits, assessments, and refunds—1982 c 176: See note following chapter digest.

Effective date—1981 c 167: See note following RCW 82.45.150.

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter digest.

Chapter 82.45A

EXCISE TAX ON OWNERSHIP TRANSFER OF A CORPORATION

Sections

82.45A.010	Definitions.
82.45A.020	Tax imposed.
82.45A.030	Exceptions.

82.45A.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Ownership transfer" means a transfer or series of transfers in any consecutive twelve-month period, for a valuable consideration, of ownership of stock possessing more than fifty percent of the total combined voting power of the issued and outstanding shares of each class of stock entitled to vote.

(2) "Value of real property assets" means the true and fair value in money, at the time an ownership transfer is completed, of any estate or interest in real property located in this state. [1991 1st sp.s. c 22 § 2.]

Intent—1991 1st sp.s. c 22: "(1) The legislature finds that transfers of ownership of a corporation may be, in some circumstances, essentially equivalent to the sale of real property held by the corporation. The legislature further finds that all transfers of possession or use of real property should be subject to the same excise tax burdens.

(2) The intent of this act is to apply an excise tax to transfers of corporate ownership when the transfer of ownership is comparable to a sale of real property. The excise tax imposed under this act is intended to be equivalent in burden to the excise tax imposed on sales of real estate under chapter 82.45 RCW." [1991 1st sp.s. c 22 § 1.]

82.45A.020 Tax imposed. (1) An excise tax is imposed on each ownership transfer of a corporation, to be paid by the corporation, at the rate of one and twenty-eight one-hundredths percent of the value of the real property assets of the corporation.

(2) Chapter 82.32 RCW applies to the tax imposed in this chapter. The tax due dates, reporting periods, and return requirements applicable to chapter 82.04 RCW apply equally to the tax imposed in this chapter. [1991 1st sp.s. c 22 § 3.]

Intent—1991 1st sp.s. c 22: See note following RCW 82.45A.010.

82.45A.030 Exceptions. The tax imposed in this chapter does not apply to ownership transfers:

(1) When the taxpayer demonstrates by a preponderance of the evidence that the primary intent of the ownership transfer is for purposes other than avoidance of the tax imposed in chapter 82.45 RCW.

(2) When the value of the real property assets of the corporation is less than fifty percent of the true and fair value in money of all assets held by the corporation at the time of the ownership transfer.

(3) Of interests that are required to be registered with the federal securities and exchange commission under the securities act of 1933 or the securities exchange act of 1934.

(4) By gift, devise, or inheritance.

(5) From one spouse to the other in accordance with the terms of a decree of divorce or in fulfillment of a property settlement agreement incident thereto.

(6) Solely for the purpose of securing a debt.

(7) Upon execution of a judgment.

(8) To a corporation that is wholly owned by the transferor and/or the transferor's spouse or children. If such transferee corporation voluntarily transfers the ownership interest, or the real property represented by the ownership interest, or such transferor, spouse, or children voluntarily transfer stock in the transferee corporation or interest in the transferee partnership capital, as the case may be, to other than (a) the transferor and/or the transferor's spouse or children, (b) a trust

having the transferor and/or the transferor's spouse or children as the only beneficiaries at the time of the transfer to the trust, or (c) a corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or children, within five years after the original transfer to which this exemption applies, excise taxes shall become due and payable on the original transfer as otherwise provided by law. [1991 1st sp.s. c 22 § 4.]

Intent—1991 1st sp.s. c 22: See note following RCW 82.45A.010.

Chapter 82.46

COUNTIES AND CITIES—EXCISE TAX ON REAL ESTATE SALES

Sections

82.46.010	Tax on sale of real property authorized—Limitations on use—Additional tax authorized—Maximum rates.
82.46.030	Disposition and distribution of proceeds.
82.46.035	Additional tax—Certain counties—Ballot proposition—Use limited to capital projects—Temporary rescindment for noncompliance.
82.46.040	Tax is lien on property—Enforcement.
82.46.050	Tax is seller's obligation—Choice of remedies.
82.46.060	Payment of tax—Evidence of payment—Recording.
82.46.070	Additional excise tax—Acquisition and maintenance of conservation areas.

82.46.010 Tax on sale of real property authorized—Limitations on use—Additional tax authorized—Maximum rates. (1) The governing body of any county or any city may impose an excise tax on each sale of real property in the unincorporated areas of the county for the county tax and in the corporate limits of the city for the city tax at a rate not exceeding one-quarter of one percent of the selling price. The revenues from this tax shall be used by the respective jurisdictions for local capital improvements, including those listed in RCW 35.43.040.

After July 1, 1990, revenues generated from the tax imposed under this subsection in counties and cities that are required or choose to plan under RCW 36.70A.040 shall be used primarily for financing capital projects specified in a capital facilities plan element of a comprehensive plan and housing relocation assistance under RCW 59.18.440 and 59.18.450. However, revenues (a) pledged by such counties and cities to debt retirement prior to July 1, 1990, may continue to be used for that purpose until all outstanding debt is retired, or (b) committed prior to July 1, 1990, by such counties or cities to a capital project may continue to be used for that purpose until the project is completed.

(2) In lieu of imposing the tax authorized in RCW 82.14.030(2), the governing body of any county or any city may impose an additional excise tax on each sale of real property in the unincorporated areas of the county for the county tax and in the corporate limits of the city for the city tax at a rate not exceeding one-half of one percent of the selling price.

(3) Taxes imposed under this section shall be collected from persons who are taxable by the state under chapter 82.45 RCW upon the occurrence of any taxable event within the unincorporated areas of the county or within the corporate limits of the city, as the case may be.

(4) Taxes imposed under this section shall comply with all applicable rules, regulations, laws, and court decisions regarding real estate excise taxes as imposed by the state under chapter 82.45 RCW.

(5) As used in this section, "city" means any city or town. [1990 1st ex.s. c 17 § 36; 1982 1st ex.s. c 49 § 11.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

82.46.030 Disposition and distribution of proceeds.

(1) The county treasurer shall place one percent of the proceeds of the taxes imposed under RCW 82.46.010 in the county current expense fund to defray costs of collection.

(2) The remaining proceeds from the county tax under RCW 82.46.010(1) shall be placed in a county capital improvements fund. The remaining proceeds from city or town taxes under RCW 82.46.010(1) shall be distributed to the respective cities and towns monthly and placed by the city treasurer in a municipal capital improvements fund.

(3) This section does not limit the existing authority of any city, town, or county to impose special assessments on property specially benefited thereby in the manner prescribed by law. [1990 1st ex.s. c 17 § 37; 1982 1st ex.s. c 49 § 13.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

82.46.035 Additional tax—Certain counties—Ballot proposition—Use limited to capital projects—Temporary rescindment for noncompliance.

(1) The governing body of any county or any city that plans under RCW 36.70A.040(1) may impose an additional excise tax on each sale of real property in the unincorporated areas of the county for the county tax and in the corporate limits of the city for the city tax at a rate not exceeding one-quarter of one percent of the selling price. Any county choosing to plan under RCW 36.70A.040(2) and any city within such a county may only adopt an ordinance imposing the excise tax authorized by this section if the ordinance is first authorized by a proposition approved by a majority of the voters of the taxing district voting on the proposition at a general election held within the district or at a special election within the taxing district called by the district for the purpose of submitting such proposition to the voters.

(2) Revenues generated from the tax imposed under subsection (1) of this section shall be used by such counties and cities solely for financing capital projects specified in a capital facilities plan element of a comprehensive plan.

(3) Revenues generated by the tax imposed by this section shall be deposited in a separate account.

(4) As used in this section, "city" means any city or town.

(5) When the governor files a notice of noncompliance under RCW 36.70A.340 with the secretary of state and the appropriate county or city, the county or city's authority to impose the additional excise tax under this section shall be temporarily rescinded until the governor files a subsequent notice rescinding the notice of noncompliance. [1991 1st sp.s. c 32 § 33; 1990 1st ex.s. c 17 § 38.]

Sections headings not law—1991 1st sp.s. c 32: See RCW 36.70A.902.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

82.46.040 Tax is lien on property—Enforcement. Any tax imposed under this chapter or RCW 82.46.070 and any interest or penalties thereon is a specific lien upon each piece of real property sold from the time of sale until the tax is paid, which lien may be enforced in the manner prescribed for the foreclosure of mortgages. [1990 1st ex.s. c 17 § 39; 1990 1st ex.s. c 5 § 4; 1982 1st ex.s. c 49 § 14.]

Reviser's note: This section was amended by 1990 1st ex.s. c 5 § 4 and by 1990 1st ex.s. c 17 § 39, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Purpose—1990 1st ex.s. c 5: See note following RCW 36.32.570.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

82.46.050 Tax is seller's obligation—Choice of remedies. The taxes levied under this chapter are the obligation of the seller and may be enforced through an action of debt against the seller or in the manner prescribed for the foreclosure of mortgages. Resort to one course of enforcement is not an election not to pursue the other. [1990 1st ex.s. c 17 § 40; 1982 1st ex.s. c 49 § 15.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

82.46.060 Payment of tax—Evidence of payment—Recording. Any taxes imposed under this chapter or RCW 82.46.070 shall be paid to and collected by the treasurer of the county within which is located the real property which was sold. The treasurer shall act as agent for any city within the county imposing the tax. The county treasurer shall cause a stamp evidencing satisfaction of the lien to be affixed to the instrument of sale or conveyance prior to its recording or to the real estate excise tax affidavit in the case of used mobile home sales. A receipt issued by the county treasurer for the payment of the tax imposed under this chapter or RCW 82.46.070 shall be evidence of the satisfaction of the lien imposed in RCW 82.46.040 and

may be recorded in the manner prescribed for recording satisfactions of mortgages. No instrument of sale or conveyance evidencing a sale subject to the tax may be accepted by the county auditor for filing or recording until the tax is paid and the stamp affixed thereto; in case the tax is not due on the transfer, the instrument shall not be accepted until suitable notation of this fact is made on the instrument by the treasurer. [1990 1st ex.s. c 17 § 41; 1990 1st ex.s. c 5 § 5; 1982 1st ex.s. c 49 § 16.]

Reviser's note: This section was amended by 1990 1st ex.s. c 5 § 5 and by 1990 1st ex.s. c 17 § 41, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Purpose—1990 1st ex.s. c 5: See note following RCW 36.32.570.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

82.46.070 Additional excise tax—Acquisition and maintenance of conservation areas. (1) Subject to subsection (2) of this section, the legislative authority of any county may impose an additional excise tax on each sale of real property in the county at a rate not to exceed one percent of the selling price. The proceeds of the tax shall be used exclusively for the acquisition and maintenance of conservation areas.

The taxes imposed under this subsection shall be imposed in the same manner and on the same occurrences, and are subject to the same conditions, as the taxes under chapter 82.45 RCW, except:

(a) The tax shall be the obligation of the purchaser; and

(b) The tax does not apply to the acquisition of conservation areas by the county.

The county may enforce the obligation through an action of debt against the purchaser or may foreclose the lien on the property in the same manner prescribed for the foreclosure of mortgages.

The tax shall take effect thirty days after the election at which the taxes are authorized.

(2) No tax may be imposed under subsection (1) of this section unless approved by a majority of the voters of the county voting thereon for a specified period and maximum rate after:

(a) The adoption of a resolution by the county legislative authority of the county proposing this action; or

(b) The filing of a petition proposing this action with the county auditor, which petition is signed by county voters at least equal in number to ten percent of the total number of voters in the county who voted at the last preceding general election.

The ballot proposition shall be submitted to the voters of the county at the next general election occurring at least sixty days after a petition is filed, or at any special election prior to this general election that has been called for such purpose by the county legislative authority.

(3) A plan for the expenditure of the excise tax proceeds shall be prepared by the county legislative authority at least sixty days before the election if the proposal is initiated by resolution of the county legislative authority, or within six months after the tax has been authorized by the voters if the proposal is initiated by petition. Prior to the adoption of this plan, the elected officials of cities located within the county shall be consulted and a public hearing shall be held to obtain public input. The proceeds of this excise tax must be expended in conformance with this plan.

(4) As used in this section, "conservation area" has the meaning given under RCW 36.32.570. [1990 1st ex.s. c 5 § 3.]

Purpose—1990 1st ex.s. c 5: See note following RCW 36.32.570.

Chapter 82.47

BORDER AREA MOTOR VEHICLE FUEL AND SPECIAL FUEL TAX

Sections

- 82.47.010 Definitions.
- 82.47.020 Tax authority.
- 82.47.030 Proceeds.

82.47.010 Definitions. The definitions set forth in this section shall apply throughout this chapter unless the context clearly requires otherwise.

(1) "Motor vehicle fuel" has the meaning given in RCW 82.36.010(2).

(2) "Special fuel" has the meaning given in RCW 82.38.020(5).

(3) "Motor vehicle" has the meaning given in RCW 82.36.010(1). [1991 c 173 § 2.]

Effective date—1991 c 173: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 173 § 7.]

82.47.020 Tax authority. The legislative authority of a border area jurisdiction may, by resolution for the purposes authorized in this chapter and by approval of a majority of the registered voters of the jurisdiction voting on the proposition at a general or special election, fix and impose an excise tax on the retail sale of motor vehicle fuel and special fuel within the jurisdiction. An election held under this section must be held not more than twelve months before the date on which the proposed tax is to be levied. The ballot setting forth the proposition shall state the tax rate that is proposed. The rate of such tax shall be in increments of one-tenth of a cent per gallon and shall not exceed one cent per gallon.

The tax imposed in this section shall be collected and paid to the jurisdiction but once in respect to any motor vehicle fuel or special fuel. This tax shall be in addition to any other tax authorized or imposed by law.

For purposes of this chapter, the term "border area jurisdictions" means all cities and towns within ten miles of an international border crossing and any transportation benefit district established under RCW 36.73.020

which has within its boundaries an international border crossing. [1991 c 173 § 1.]

Effective date—1991 c 173: See note following RCW 82.47.010.

82.47.030 Proceeds. The entire proceeds of the tax imposed under this chapter, less refunds authorized by the resolution imposing such tax and less amounts deducted by the border area jurisdiction for administration and collection expenses, shall be used solely for the purposes of border area jurisdiction street maintenance and construction. [1991 c 173 § 3.]

Effective date—1991 c 173: See note following RCW 82.47.010.

Chapter 82.49

WATERCRAFT EXCISE TAX

Sections

- 82.49.030 Payment of tax—Deposit in general fund—Use for purposes specified in RCW 88.36.100.

82.49.030 Payment of tax—Deposit in general fund—Use for purposes specified in RCW 88.36.100.

(1) The excise tax imposed under this chapter is due and payable to the department of licensing or its agents at the time of registration of a vessel. The department of licensing shall not issue or renew a registration for a vessel until the tax is paid in full.

(2) The excise tax collected under this chapter shall be deposited in the general fund.

(3) For the 1993–95 fiscal biennium, the watercraft excise tax revenues exceeding five million dollars in each fiscal year, but not exceeding six million dollars, may, subject to appropriation by the legislature, be used for the purposes specified in RCW 88.36.100. [1991 1st sp.s. c 16 § 925; 1989 c 393 § 10; 1983 c 7 § 10.]

Severability—**Effective date**—1991 1st sp.s. c 16: See notes following RCW 9.46.100.

Chapter 82.50

MOBILE HOMES, TRAVEL TRAILERS, AND CAMPERS EXCISE TAX

Sections

- 82.50.400 Tax imposed—Collection—Transfer of ownership.
- 82.50.405 Additional annual clean air excise tax.
- 82.50.410 Rate—Minimum payable—Dealer tax.
- 82.50.420 Repealed.
- 82.50.425 Valuation of travel trailers and campers.
- 82.50.430 Repealed.
- 82.50.435 Appeal of valuation.
- 82.50.510 Remittance of tax to state—Distribution to cities, counties and schools.

82.50.400 Tax imposed—Collection—Transfer of ownership. An annual excise tax is imposed on the owner of any travel trailer or camper for the privilege of using such travel trailer or camper in this state. The excise tax hereby imposed shall be due and payable to the department of licensing or its agents at the time of registration of a travel trailer or camper. Whenever an application is made to the department of licensing or its

agents for a license for a travel trailer or camper there shall be collected, in addition to the amount of the license fee or renewal license fee, the amount of the excise tax imposed by this chapter, and no dealer's license or license plates, and no license or license plates for a travel trailer or camper may be issued unless such tax is paid in full. No additional tax shall be imposed under this chapter upon any travel trailer or camper upon the transfer of ownership thereof, if the tax imposed by this chapter with respect to such travel trailer or camper has already been paid for the registration year or fractional part thereof in which such transfer occurs. [1990 c 42 § 320; 1979 c 123 § 1; 1975 1st ex.s. c 118 § 15; 1971 ex.s. c 299 § 55.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—Severability—1975 1st ex.s. c 118: See notes following RCW 46.16.006.

Effective date—1971 ex.s. c 299: See RCW 82.50.901(3).

Severability—1971 ex.s. c 299: See note following RCW 82.04.050.

82.50.405 Additional annual clean air excise tax. Effective with October 1992 motor vehicle registration expirations, an additional annual clean air excise tax of two dollars and twenty-five cents is imposed on the owner of any travel trailer or camper for the privilege of using such travel trailer or camper in this state. Effective with July 1994 motor vehicle registration expirations, the annual amount of additional excise tax shall be two dollars. The excise tax hereby imposed shall be due and payable to the department of licensing or its agents at the time of registration of a travel trailer or camper. Whenever an application is made to the department of licensing or its agents for a license for a travel trailer or camper there shall be collected, in addition to the amount of the license fee or renewal license fee, the amount of the excise tax imposed by this chapter, and no license or license plates for a travel trailer or camper may be issued unless such tax is paid in full. No additional tax shall be imposed under this chapter upon any travel trailer or camper upon the transfer of ownership thereof, if the tax imposed by this chapter with respect to such travel trailer or camper has already been paid for the registration year or fractional part thereof in which such transfer occurs. Receipts from the tax levied in this section shall be deposited in the air pollution control account created by RCW 70.94.015. [1991 c 199 § 226.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

82.50.410 Rate—Minimum payable—Dealer tax. The rate and measure of tax imposed by RCW 82.50.400 for each registration year shall be one percent, and a surcharge of one-tenth of one percent, of the value of the travel trailer or camper, as determined in the manner provided in this chapter: PROVIDED, That the excise tax upon a travel trailer or camper licensed for the first time in this state after the last day of any

registration month may only be levied for the remaining months of the registration year including the month in which the travel trailer or camper is first licensed: PROVIDED FURTHER, That the minimum amount of tax payable shall be two dollars: PROVIDED FURTHER, That every dealer in mobile homes or travel trailers, for the privilege of using any mobile home or travel trailer eligible to be used under a dealer's license plate, shall pay an excise tax of two dollars, and such tax shall be collected upon the issuance of each original dealer's license plate, and also a similar tax shall be collected upon the issuance of each dealer's duplicate license plate, which taxes shall be in addition to any tax otherwise payable under this chapter.

A travel trailer or camper shall be deemed licensed for the first time in this state when such vehicle was not previously licensed by this state for the registration year or any part thereof immediately preceding the registration year in which application for license is made or when it has been registered in another jurisdiction subsequent to any prior registration in this state. [1991 c 199 § 225; 1990 c 42 § 321; 1979 c 123 § 2; 1975 1st ex.s. c 118 § 16; 1972 ex.s. c 144 § 2; 1971 ex.s. c 299 § 56.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—Severability—1975 1st ex.s. c 118: See notes following RCW 46.16.006.

82.50.420 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

82.50.425 Valuation of travel trailers and campers. For the purpose of determining the tax under this chapter, the value of a travel trailer or camper is the manufacturer's base suggested retail price of the travel trailer or camper when first offered for sale as new, excluding any optional equipment, applicable federal excise taxes, state and local sales or use taxes, transportation or shipping costs, or preparatory or delivery costs, multiplied by the applicable percentage listed in this section based on the year of service.

If the manufacturer's base suggested retail price is unavailable or otherwise unascertainable at the time of initial registration in this state, the department shall determine a value equivalent to a manufacturer's base suggested retail price as follows:

(1) The department shall determine a value using any information that may be available, including any guidebook, report, or compendium of recognized standing in the automotive industry or the selling price and year of sale of the travel trailer or camper. The department may use an appraisal by the county assessor. In valuing a travel trailer or camper for which the current value or selling price is not indicative of the value of similar travel trailers or campers of the same year and model, the department shall establish a value that more closely

represents the average value of similar travel trailers or campers of the same year and model. If the travel trailer or camper is home-built, the value shall not be less than the cost of construction.

(2) The value determined in subsection (1) of this section shall be divided by the applicable percentage listed in this section to establish a value equivalent to a manufacturer's base suggested retail price. The applicable percentage shall be based on the year of service of the travel trailer or camper for which the value is determined.

YEAR OF SERVICE	PERCENTAGE
1	100
2	90
3	84
4	79
5	73
6	65
7	60
8	55
9	50
10	45
11	41
12	37
13	33
14	28
15	24
16 or older	20

[1990 c 42 § 323.]

Transitional valuation method and tax limitation—1990 c 42: See note following RCW 82.44.041.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

82.50.430 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

82.50.435 Appeal of valuation. If the department determines a value for a travel trailer or camper under RCW 82.50.425 equivalent to a manufacturer's base suggested retail price, any person who pays the tax for that travel trailer or camper may appeal the valuation to the department under chapter 34.05 RCW. If the taxpayer is successful on appeal, the department shall refund the excess tax in the manner provided in RCW 82.50.170. [1990 c 42 § 324.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

82.50.510 Remittance of tax to state—Distribution to cities, counties and schools. The county auditor shall regularly, when remitting motor vehicle excise taxes, pay to the state treasurer the excise taxes imposed by RCW 82.50.400. The treasurer shall then distribute such funds quarterly on the first day of the month of January, April, July and October of each year in the following amount: (1) For the one percent tax imposed under RCW 82.50.410, fifteen percent to cities and

towns for the use thereof apportioned ratably among such cities and towns on the basis of population; fifteen percent to counties for the use thereof to be apportioned ratably among such counties on the basis of moneys collected in such counties from the excise taxes imposed under this chapter; and seventy percent for schools to be deposited in the state general fund; and (2) for the one-tenth of one percent surcharge imposed under RCW 82.50.410, one hundred percent to the transportation fund created in RCW 82.44.180. [1991 c 199 § 227; 1990 c 42 § 322; 1975-'76 2nd ex.s. c 75 § 1; 1971 ex.s. c 299 § 66.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Chapter 82.64

CARBONATED BEVERAGE TAX

Sections

82.64.010	Definitions.
82.64.020	Tax imposed—Wholesale, retail.
82.64.030	Exemptions.
82.64.040	Credit against tax.
82.64.050	Wholesaler to collect tax from buyer.
82.64.060	Retail sales—Notice.

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

(1) "Carbonated beverage" has its ordinary meaning and includes any nonalcoholic liquid intended for human consumption which contains carbon dioxide, whether carbonation is obtained by natural or artificial means.

(2) "Previously taxed carbonated beverage or syrup" means a carbonated beverage or syrup in respect to which a tax has been paid under this chapter. A "previously taxed carbonated beverage" includes carbonated beverages in respect to which a tax has been paid under this chapter on the carbonated beverage or on the syrup in the carbonated beverage.

(3) "Syrup" means a concentrated liquid which is added to carbonated water to produce a carbonated beverage.

(4) Except for terms defined in this section, the definitions in chapters 82.04, 82.08, and 82.12 RCW apply to this chapter. [1991 c 80 § 1; 1989 c 271 § 505.]

Policy—1991 c 80: "The taxes imposed in this act are intended to raise revenue for the enforcement of the drug laws of the state. It is the policy of the state to actively combat the problem of drug abuse by aggressive enforcement of the state's drug laws and by extensive promotion of public education programs designed to increase public and consumer awareness of the state's drug problem and its enforcement measures." [1991 c 80 § 6.]

Savings—1991 c 80: "The amendatory sections of this act shall not be construed as affecting any existing right acquired or liability or obligation incurred under those sections as they existed before this act or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1991 c 80 § 8.]

Effective date—1991 c 80: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the

state government and its existing public institutions, and shall take effect June 1, 1991." [1991 c 80 § 9.]

82.64.020 Tax imposed—Wholesale, retail. (1) A tax is imposed on each sale at wholesale of a carbonated beverage or syrup in this state. The rate of the tax shall be equal to eighty-four one-thousandths of a cent per ounce for carbonated beverages and seventy-five cents per gallon for syrups. Fractional amounts shall be taxed proportionally.

(2) A tax is imposed on each sale at retail of a carbonated beverage or syrup in this state. The rate of the tax shall be equal to the rate imposed under subsection (1) of this section.

(3) Moneys collected under this chapter shall be deposited in the drug enforcement and education account under RCW 69.50.520.

(4) Chapter 82.32 RCW applies to the taxes imposed in this chapter. The tax due dates, reporting periods, and return requirements applicable to chapter 82.04 RCW apply equally to the taxes imposed in this chapter. [1991 c 80 § 2; 1989 c 271 § 506.]

Policy—Savings—Effective date—1991 c 80: See notes following RCW 82.64.010.

82.64.030 Exemptions. The following are exempt from the taxes imposed in this chapter:

(1) Any successive sale of a previously taxed carbonated beverage or syrup.

(2) Any carbonated beverage or syrup that is transferred to a point outside the state for use outside the state. The department shall provide by rule appropriate procedures and exemption certificates for the administration of this exemption.

(3) Any sale at wholesale of a trademarked carbonated beverage or syrup by any person to a person commonly known as a bottler who is appointed by the owner of the trademark to manufacture, distribute, and sell such trademarked carbonated beverage or syrup within a specified geographic territory.

(4) Any sale of carbonated beverage or syrup in respect to which a tax on the privilege of possession was paid under this chapter before June 1, 1991. [1991 c 80 § 3; 1989 c 271 § 507.]

Policy—Savings—Effective date—1991 c 80: See notes following RCW 82.64.010.

82.64.040 Credit against tax. (1) Credit shall be allowed, in accordance with rules of the department, against the taxes imposed in this chapter for any carbonated beverage or syrup tax paid to another state with respect to the same carbonated beverage or syrup. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to that carbonated beverage or syrup.

(2) For the purpose of this section:

(a) "Carbonated beverage or syrup tax" means a tax:

(i) That is imposed on the sale at wholesale of carbonated beverages or syrup and that is not generally imposed on other activities or privileges; and

(ii) That is measured by the volume of the carbonated beverage or syrup.

(b) "State" means (i) a state of the United States other than Washington, or any political subdivision of such other state, (ii) the District of Columbia, and (iii) any foreign country or political subdivision thereof. [1991 c 80 § 7; 1989 c 271 § 508.]

Policy—Savings—Effective date—1991 c 80: See notes following RCW 82.64.010.

82.64.050 Wholesaler to collect tax from buyer. (1) The tax imposed in RCW 82.64.020(1) shall be paid by the buyer to the wholesaler and each wholesaler shall collect from the buyer the full amount of the tax payable in respect to each taxable sale, unless the wholesaler is prohibited from collecting the tax from the buyer under the Constitution of this state or the Constitution or laws of the United States. Regardless of the obligation to collect the tax from the buyer, the wholesaler is liable to the state for the amount of the tax. The tax imposed in RCW 82.64.020(2) shall be paid by the retailer. The buyer is not obligated to pay or report to the department the taxes imposed in RCW 82.64.020.

(2) The tax required to be collected by the wholesaler shall be stated separately from the selling price in any sales invoice or other instrument of sale.

(3) Any wholesaler who fails or refuses to collect tax under this section, with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, is guilty of a misdemeanor.

(4) The amount of tax required to be collected under this section shall constitute a debt from the buyer to the wholesaler until paid by the buyer to the wholesaler. [1991 c 80 § 4.]

Policy—Savings—Effective date—1991 c 80: See notes following RCW 82.64.010.

82.64.060 Retail sales—Notice. (1) Each retailer at a retail store with a sales and storage area totaling more than four thousand square feet may:

(a) Include in all print advertising of carbonated beverages a notice with the statement specified in subsection (2) of this section.

(b) Post shelf notices with the statement specified in subsection (2) of this section. Shelf notices shall be provided by the wholesaler, and shall be posted by the wholesaler or the retailer next to each price label on the carbonated beverage shelves of the retail store.

(2) Each notice under this section shall state: "Price includes (amount) Washington Drug Fund Tax." In the notice, "(amount)" shall be replaced with the specific amount of the tax imposed under this chapter upon the quantity of carbonated beverage for which the price is stated.

(3) This section does not apply to the sale, advertising, or shelf display of:

(a) Syrups;

(b) Carbonated beverages sold through vending machines;

(c) Carbonated beverages dispensed into open containers;

(d) Carbonated beverages sold by a wholesaler who is prohibited under RCW 66.28.010 from having a direct or indirect financial interest in any retail business. [1991 c 80 § 5.]

Policy—Savings—Effective date—1991 c 80: See notes following RCW 82.64.010.

Chapter 82.65

HOSPITALS—MEDICAID RECEIPTS

Sections

82.65.010	Definitions.
82.65.020	Tax imposed.
82.65.030	Administration.
82.65.040	Expiration of chapter.
82.65.900	Savings—Credits, refunds.

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

(1) "State medicaid receipts" means that portion of the gross income of the business that consists of Washington state general fund payments attributable to the medicaid program, other than from federal sources, for inpatient and outpatient hospital services under the medical assistance program provided in RCW 74.09.520 or under the limited casualty program provided in RCW 74.09.700 for persons who are medically needy under the social security Title XIX state plan.

(2) "Hospital" means a hospital required to be licensed under chapter 70.41 RCW, or a private hospital required to be licensed under chapter 71.12 RCW, but not including federal hospitals or state hospitals established under chapter 72.23 RCW.

(3) The meaning given to words and phrases in chapter 82.04 RCW apply throughout this chapter, to the extent applicable. [1991 1st sp.s. c 9 § 1.]

Effective dates—1991 1st sp.s. c 9: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect on July 1, 1991, except sections 1 through 6 and 9 of this act which shall take effect on September 1, 1991." [1991 1st sp.s. c 9 § 11.]

82.65.020 Tax imposed. In addition to any other tax, a tax is imposed on every hospital for the act or privilege of engaging in business within this state. The tax is equal to state medicaid receipts multiplied by the rate of twenty percent. [1991 1st sp.s. c 9 § 2.]

Effective dates—1991 1st sp.s. c 9: See note following RCW 82.65.010.

82.65.030 Administration. Chapter 82.32 RCW applies to the tax imposed in this chapter. The tax due dates, reporting periods, and return requirements applicable to chapter 82.04 RCW apply equally to the tax imposed in this chapter. [1991 1st sp.s. c 9 § 3.]

Effective dates—1991 1st sp.s. c 9: See note following RCW 82.65.010.

82.65.040 Expiration of chapter. This chapter is temporary and shall expire on the earliest of:

(1) The date that federal medicaid matching funds for the purposes specified in section 10(1), chapter 9, Laws of 1991 1st sp. sess. become unavailable or are substantially reduced, as such date is certified by the secretary of social and health services;

(2) The date that federal medicaid matching funds for the purposes specified in section 10(1), chapter 9, Laws of 1991 1st sp. sess. become unavailable or are substantially reduced, as determined by a permanent injunction, court order, or final court decision; or

(3) July 1, 1993. [1991 1st sp.s. c 9 § 4.]

Effective dates—1991 1st sp.s. c 9: See note following RCW 82.65.010.

82.65.900 Savings—Credits, refunds. (1) The expiration of RCW 82.65.010 through 82.65.040 shall not be construed as affecting any existing right acquired or liability or obligation incurred under those sections or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections.

(2) Taxes that have been paid under RCW 82.65.010 through 82.65.040, but are properly attributable to taxable events occurring after the expiration of those sections, shall be credited or refunded as provided in RCW 82.32.060. [1991 1st sp.s. c 9 § 5.]

Effective dates—1991 1st sp.s. c 9: See note following RCW 82.65.010.

Chapter 82.80

LOCAL OPTION TRANSPORTATION TAXES

Sections

82.80.010	Motor vehicle and special fuel tax.
82.80.020	Vehicle license fee.
82.80.030	Commercial parking tax.
82.80.040	Street utility—Establishment.
82.80.050	Street utility—Charges, credits.
82.80.060	Use of other proceeds by utility.
82.80.070	Use of revenues.
82.80.080	Distribution of taxes.
82.80.090	Referendum.
82.80.900	Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42.

82.80.010 Motor vehicle and special fuel tax. (1) Subject to the conditions of this section, any county may levy, by approval of its legislative body and a majority of the registered voters of the county voting on the proposition at a general or special election, additional excise taxes equal to ten percent of the state-wide motor vehicle fuel tax rate under RCW 82.36.025 on each gallon of motor vehicle fuel as defined in RCW 82.36.010(2) and on each gallon of special fuel as defined in RCW 82.38.020(5) sold within the boundaries of the county. Vehicles paying an annual license fee under RCW 82.38.075 are exempt from the county fuel excise tax. An election held under this section must be held not more than twelve months before the date on which the proposed tax is to be levied. The ballot setting forth the proposition shall state the tax rate that is proposed. The

county's authority to levy additional excise taxes under this section includes the incorporated and unincorporated areas of the county. The additional excise taxes are subject to the same exceptions and rights of refund as applicable to other motor vehicle fuel and special fuel excise taxes levied under chapters 82.36 and 82.38 RCW. The proposed tax shall not be levied less than one month from the date the election results are certified by the county election officer. The commencement date for the levy of any tax under this section shall be the first day of January, April, July, or October.

(2) Every person subject to the tax shall pay, in addition to any other taxes provided by law, an additional excise tax to the director of licensing at the rate levied by a county exercising its authority under this section.

(3) The state treasurer shall distribute monthly to the levying county and cities contained therein the proceeds of the additional excise taxes collected under this section, after the deductions for payments and expenditures as provided in RCW 46.68.090 (1) and (2) and under the conditions and limitations provided in RCW 82.80.080.

(4) The proceeds of the additional excise taxes levied under this section shall be used strictly for transportation purposes in accordance with RCW 82.80.070.

(5) The department of licensing shall administer and collect the county fuel taxes. The department shall deduct a percentage amount, as provided by contract, for administrative, collection, refund, and audit expenses incurred. The remaining proceeds shall be remitted to the custody of the state treasurer for monthly distribution under RCW 82.80.080. [1991 c 339 § 12; 1990 c 42 § 201.]

82.80.020 Vehicle license fee. (1) The legislative authority of a county may fix and impose an additional fee, not to exceed fifteen dollars per vehicle, for each vehicle that is subject to license fees under RCW 46.16.060 and is determined by the department of licensing to be registered within the boundaries of the county.

(2) The department of licensing shall administer and collect the fee. The department shall deduct a percentage amount, as provided by contract, not to exceed two percent of the taxes collected, for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer for monthly distribution under RCW 82.80.080.

(3) The proceeds of this fee shall be used strictly for transportation purposes in accordance with RCW 82.80.070.

(4) A county imposing this fee shall delay the effective date at least six months from the date the ordinance is enacted to allow the department of licensing to implement administration and collection of the fee.

(5) The legislative authority of a county may develop and initiate a refund process of the fifteen dollar fee to the registered owners of vehicles residing within the boundaries of the county who are sixty-one years old or older at the time of payment of the fee and whose household income for the previous calendar year is eighteen thousand dollars or less or who has a physical

disability and who has paid the fifteen dollar additional fee. [1991 c 318 § 13; 1990 c 42 § 206.]

82.80.030 Commercial parking tax. (1) Subject to the conditions of this section, the legislative authority of a county or city may fix and impose a parking tax on all persons engaged in a commercial parking business within its respective jurisdiction. The jurisdiction of a county, for purposes of this section, includes only the unincorporated area of the county. The jurisdiction of a city includes only the area within its incorporated boundaries.

(2) In lieu of the tax in subsection (1) of this section, a city or a county in its unincorporated area may fix and impose a tax for the act or privilege of parking a motor vehicle in a facility operated by a commercial parking business.

The city or county may provide that:

(a) The tax is paid by the operator or owner of the motor vehicle;

(b) The tax applies to all parking for which a fee is paid, whether paid or leased, including parking supplied with a lease of nonresidential space;

(c) The tax is collected by the operator of the facility and remitted to the city or county;

(d) The tax is a fee per vehicle or is measured by the parking charge;

(e) The tax rate varies with zoning or location of the facility, the duration of the parking, the time of entry or exit, the type or use of the vehicle, or other reasonable factors; and

(f) Tax exempt carpools, vehicles with handicapped decals, or government vehicles are exempt from the tax.

(3) "Commercial parking business" as used in this section, means the ownership, lease, operation, or management of a commercial parking lot in which fees are charged. "Commercial parking lot" means a covered or uncovered area with stalls for the purpose of parking motor vehicles.

(4) The rate of the tax under subsection (1) of this section may be based either upon gross proceeds or the number of vehicle stalls available for commercial parking use. The rates charged must be uniform for the same class or type of commercial parking business.

(5) The county or city levying the tax provided for in subsection (1) or (2) of this section may provide for its payment on a monthly, quarterly, or annual basis. Each local government may develop by ordinance or resolution rules for administering the tax, including provisions for reporting by commercial parking businesses, collection, and enforcement.

(6) The proceeds of the commercial parking tax fixed and imposed under subsection (1) or (2) of this section shall be used strictly for transportation purposes in accordance with RCW 82.80.070. [1990 c 42 § 208.]

82.80.040 Street utility—Establishment. A city or town may elect by action of its legislative authority to own, construct, maintain, operate, and preserve all or any described portion of its streets as a separate enterprise and facility, known as a street utility, and from

time to time add other existing or new streets to that street utility, with full power to own, construct, maintain, operate, and preserve such streets. The legislative authority of the city or town may include as a part of the street utility, street lighting, traffic control devices, sidewalks, curbs, gutters, parking facilities, and drainage facilities. The legislative authority of the city or town is the governing body of the street utility. [1991 c 141 § 1. Prior: 1990 c 42 § 209.]

82.80.050 Street utility—Charges, credits. A city or town electing to own, construct, maintain, operate, and preserve its streets as a separate street utility may levy periodic charges for the use or availability of the streets in a total annual amount of up to fifty percent of the actual costs for maintenance, operation, and preservation of facilities under the jurisdiction of the street utility. The rates charged for the use must be uniform for the same class of service and all business and residential properties must be subject to the utility charge. Charges imposed on businesses shall be measured solely by the number of employees and shall not exceed the equivalent of two dollars per full-time equivalent employee per month. Charges imposed against owners or occupants of residential property shall not exceed two dollars per month per housing unit as defined in RCW 35.95.040. Charges authorized in this section shall not be imposed against owners of property: (1) Exempt under RCW 84.36.010; (2) exempt from the leasehold tax under chapter 82.29A RCW; or (3) used for nonprofit or sectarian purposes, which if said property were owned by such organization would qualify for exemption under chapter 84.36 RCW. The charges shall not be computed on the basis of an ad valorem charge on the underlying real property and improvements. This section shall not be used as a basis to directly or indirectly charge transportation impact fees or mitigation fees of any kind against new development. A city or town may contract with any other utility or local government to provide for billing and collection of the street utility charges.

In classifying service furnished within the general categories of business and residential, the city or town legislative authority may in its discretion consider any or all of the following factors: The difference in cost of service to the various users or traffic generators; location of the various users or traffic generators within the city or town; the difference in cost of maintenance, operation, construction, repair, and replacement of the various parts of the enterprise and facility; the different character of the service furnished to various users or traffic generators within the city or town; the size and quality of the street service furnished; the time of use or traffic generation; capital contributions made to the facility including but not limited to special assessments; and any other matters that present a reasonable difference as a ground for distinction, or the entire category of business or residential may be established as a single class. The city or town may reduce or exempt charges on residential properties to the extent of their occupancy by low-income senior citizens and low-income disabled citizens

as provided in RCW 74.38.070(1), or to the extent of their occupancy by the needy or infirm.

The charges shall be charges against the property and the use thereof and shall become liens and be enforced in the same manner as rates and charges for the use of systems of sewerage under chapter 35.67 RCW.

Any city or town ordinance or resolution creating a street utility must contain a provision granting to any business a credit against any street utility charge the full amount of any commuter or employer tax paid for transportation purposes by that business. [1991 c 141 § 2. Prior: 1990 c 42 § 210.]

82.80.060 Use of other proceeds by utility. The city or town electing to own, construct, maintain, operate, and preserve its streets and related facilities as a utility under this chapter may finance the construction, operation, maintenance, and preservation through local improvement districts, utility local improvement districts, or with proceeds from general obligation bonds and revenue bonds payable from the charges issued in accordance with chapter 35.41, 35.92, or 39.46 RCW, or any combination thereof. The city or town may use, in addition to the charges authorized by RCW 82.80.050, funds from general taxation, money received from the federal, state, or other local governments, and other funds made available to it. The proceeds of the charges authorized by RCW 82.80.050 shall be used strictly for transportation purposes in accordance with this chapter and RCW 82.80.070. [1991 c 141 § 3. Prior: 1990 c 42 § 211.]

82.80.070 Use of revenues. (1) The proceeds collected pursuant to the exercise of the local option authority of RCW 82.80.010, 82.80.020, 82.80.030, and 82.80.050 (hereafter called "local option transportation revenues") shall be used for transportation purposes only, including but not limited to the following: The operation and preservation of roads, streets, and other transportation improvements; new construction, reconstruction, and expansion of city streets, county roads, and state highways and other transportation improvements; development and implementation of public transportation and high-capacity transit improvements and programs; and planning, design, and acquisition of right of way and sites for such transportation purposes. The proceeds collected from excise taxes on the sale, distribution, or use of motor vehicle fuel and special fuel under RCW 82.80.010 shall be used exclusively for "highway purposes" as that term is construed in Article II, section 40 of the state Constitution.

(2) The local option transportation revenues shall be expended for transportation uses consistent with the adopted transportation and land use plans of the jurisdiction expending the funds and consistent with any applicable and adopted regional transportation plan for metropolitan planning areas.

(3) Each local government with a population greater than eight thousand that levies or expends local option transportation funds, is also required to develop and adopt a specific transportation program that contains the following elements:

(a) The program shall identify the geographic boundaries of the entire area or areas within which local option transportation revenues will be levied and expended.

(b) The program shall be based on an adopted transportation plan for the geographic areas covered and shall identify the proposed operation and construction of transportation improvements and services in the designated plan area intended to be funded in whole or in part by local option transportation revenues and shall identify the annual costs applicable to the program.

(c) The program shall indicate how the local transportation plan is coordinated with applicable transportation plans for the region and for adjacent jurisdictions.

(d) The program shall include at least a six-year funding plan, updated annually, identifying the specific public and private sources and amounts of revenue necessary to fund the program. The program shall include a proposed schedule for construction of projects and expenditure of revenues. The funding plan shall consider the additional local tax revenue estimated to be generated by new development within the plan area if all or a portion of the additional revenue is proposed to be earmarked as future appropriations for transportation improvements in the program.

(4) Local governments with a population greater than eight thousand exercising the authority for local option transportation funds shall periodically review and update their transportation program to ensure that it is consistent with applicable local and regional transportation and land use plans and within the means of estimated public and private revenue available.

(5) In the case of expenditure for new or expanded transportation facilities, improvements, and services, priorities in the use of local option transportation revenues shall be identified in the transportation program and expenditures shall be made based upon the following criteria, which are stated in descending order of weight to be attributed:

(a) First, the project serves a multijurisdictional function;

(b) Second, it is necessitated by existing or reasonably foreseeable congestion;

(c) Third, it has the greatest person-carrying capacity;

(d) Fourth, it is partially funded by other government funds, such as from the state transportation improvement board, or by private sector contributions, such as those from the local transportation act, chapter 39.92 RCW; and

(e) Fifth, it meets such other criteria as the local government determines is appropriate.

(6) It is the intent of the legislature that as a condition of levying, receiving, and expending local option transportation revenues, no local government agency use the revenues to replace, divert, or loan any revenues currently being used for transportation purposes to nontransportation purposes. The association of Washington cities and the Washington state association of counties, in consultation with the legislative transportation committee, shall study the issue of nondiversion

and make recommendations to the legislative transportation committee for language implementing the intent of this section by December 1, 1990.

(7) Local governments are encouraged to enter into interlocal agreements to jointly develop and adopt with other local governments the transportation programs required by this section for the purpose of accomplishing regional transportation planning and development.

(8) Local governments may use all or a part of the local option transportation revenues for the amortization of local government general obligation and revenue bonds issued for transportation purposes consistent with the requirements of this section. [1991 c 141 § 4. Prior: 1990 c 42 § 212.]

82.80.080 Distribution of taxes. The state treasurer shall distribute revenues, less authorized deductions, generated by the local option taxes authorized in RCW 82.80.010 and 82.80.020, levied by counties to the levying counties, and cities contained in those counties, based on the relative per capita population. County population for purposes of this section is equal to one and one-half of the unincorporated population of the county. In calculating the distributions, the state treasurer shall use the population estimates prepared by the state office of financial management and shall further calculate the distribution based on information supplied by the departments of licensing and revenue, as appropriate. [1990 c 42 § 213.]

82.80.090 Referendum. A referendum petition to repeal a county or city ordinance imposing a tax or fee authorized under RCW 82.80.020 and 82.80.030 must be filed with a filing officer, as identified in the ordinance, within seven days of passage of the ordinance. Within ten days, the filing officer shall confer with the petitioner concerning form and style of the petition, issue an identification number for the petition, and write a ballot title for the measure. The ballot title shall be posed as a question so that an affirmative answer to the question and an affirmative vote on the measure results in the tax or fee being imposed and a negative answer to the question and a negative vote on the measure results in the tax or fee not being imposed. The petitioner shall be notified of the identification number and ballot title within this ten-day period.

After this notification, the petitioner has thirty days in which to secure on petition forms the signatures of not less than fifteen percent of the registered voters of the county for county measures, or not less than fifteen percent of the registered voters of the city for city measures, and to file the signed petitions with the filing officer. Each petition form must contain the ballot title and the full text of the measure to be referred. The filing officer shall verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted, the filing officer shall submit the referendum measure to the county or city voters at a general or special election held on one of the dates provided in RCW 29.13.010 as determined by the county or city legislative authority, which election shall not take place later than

one hundred twenty days after the signed petition has been filed with the filing officer.

The referendum procedure provided in this section is the exclusive method for subjecting any county or city ordinance imposing a tax or fee under RCW 82.80.020 and 82.80.030 to a referendum vote. [1990 c 42 § 214.]

82.80.900 Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42. See notes following RCW 82.36.025.

Title 83 ESTATE TAXATION

Chapters

83.100 Estate and transfer tax act.

83.110 Uniform estate tax apportionment act.

Chapter 83.100

ESTATE AND TRANSFER TAX ACT

Sections

83.100.020 Definitions.

83.100.020 Definitions. As used in this chapter:

- (1) "Decedent" means a deceased individual;
- (2) "Department" means the department of revenue, the director of that department, or any employee of the department exercising authority lawfully delegated to him by the director;
- (3) "Federal credit" means (a) for a transfer, the maximum amount of the credit for state taxes allowed by section 2011 of the United States Internal Revenue Code of 1986, as amended or renumbered; and (b) for a generation-skipping transfer, the maximum amount of the credit for state taxes allowed by section 2604 of the United States Internal Revenue Code of 1986, as amended or renumbered;
- (4) "Federal return" means any tax return required by chapter 11 or 13 of the United States Internal Revenue Code of 1986, as amended or renumbered, and any regulations thereunder;
- (5) "Federal tax" means (a) for a transfer, a tax under chapter 11 of the United States Internal Revenue Code of 1986, as amended or renumbered; and (b) for a generation-skipping transfer, the tax under chapter 13 of the United States Internal Revenue Code of 1986, as amended or renumbered;
- (6) "Generation-skipping transfer" means a "generation-skipping transfer" as defined and used in section 2611 of the United States Internal Revenue Code of 1986, as amended or renumbered;
- (7) "Gross estate" means "gross estate" as defined and used in section 2031 of the United States Internal Revenue Code of 1986, as amended or renumbered;
- (8) "Nonresident" means a decedent who was domiciled outside Washington at his death;

(9) "Person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity and, to the extent permitted by law, any federal, state, or other governmental unit or subdivision or agency, department, or instrumentality thereof;

(10) "Person required to file the federal return" means any person required to file a return required by chapter 11 or 13 of the Internal Revenue Code of 1986, as amended or renumbered, such as the personal representative of an estate; or a transferor, trustee, or beneficiary of a generation-skipping transfer; or a qualified heir with respect to qualified real property, as defined and used in section 2032A(c) of the United States Internal Revenue Code of 1986, as amended or renumbered;

(11) "Property" means (a) for a transfer, property included in the gross estate; and (b) for a generation-skipping transfer, all real and personal property subject to the federal tax;

(12) "Resident" means a decedent who was domiciled in Washington at time of death;

(13) "Transfer" means "transfer" as used in section 2001 of the United States Internal Revenue Code of 1986, as amended or renumbered, or a disposition or cessation of qualified use as defined and used in section 2032A(c) of the United States Internal Revenue Code of 1986, as amended or renumbered; and

(14) "Trust" means "trust" under Washington law and any arrangement described in section 2652 of the Internal Revenue Code of 1986, as amended or renumbered.

(15) References in this chapter to the United States internal revenue code of 1986, to a chapter of the code, and to regulations under the code are to the code, chapters, and regulations in effect on June 7, 1990. [1990 c 224 § 1; 1988 c 64 § 2; 1981 2nd ex.s. c 7 § 83.100.020 (Initiative Measure No. 402, approved November 3, 1981).]

Chapter 83.110

UNIFORM ESTATE TAX APPORTIONMENT ACT

Sections

83.110.030 Apportionment procedure.

83.110.030 Apportionment procedure. (1) The court having jurisdiction over the administration of the estate of a decedent shall determine the apportionment of the tax. If there are no probate proceedings, the court of the county wherein the decedent was domiciled at death shall determine the apportionment of the tax upon the application of the person required to pay the tax.

(2) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in this chapter because of special circumstances, it may direct apportionment thereon in the manner it finds equitable.

(3) The expenses reasonably incurred by any fiduciary and by other persons interested in the estate in connection with the determination of the amount and apportionment of the tax shall be apportioned as provided in RCW 83.110.020 and charged and collected as a part of the tax apportioned. If the court finds it is inequitable to apportion the expenses as provided in RCW 83.110.020, it may direct apportionment thereof equitably.

(4) If the court finds that the assessment of penalties and interest is due to delay caused by the negligence of the fiduciary, the court may charge the fiduciary with the amount of the assessed penalties and interest.

(5) In any suit or judicial proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this chapter, the determination of the court in respect thereto is prima facie correct.

(6) In the case where there are successive interests with respect to retirement distributions, the excise tax shall be equitably apportioned by the court having jurisdiction over the administration of the estate among the persons interested in the retirement distributions as defined in RCW 83.110.010(6). [1990 c 180 § 6; 1989 c 40 § 3; 1986 c 63 § 3.]

Construction—Severability—1989 c 40: See note following RCW 83.110.010.

Title 84

PROPERTY TAXES

Chapters

84.04	Definitions.
84.08	General powers and duties of department of revenue.
84.09	General provisions.
84.26	Historic property.
84.28	Reforestation lands.
84.33	Timber and forest lands.
84.36	Exemptions.
84.38	Deferral of special assessments and/or property taxes.
84.40	Listing of property.
84.40A	Listing of leasehold estates.
84.44	Taxable situs.
84.48	Equalization of assessments.
84.52	Levy of taxes.
84.55	Limitations upon regular property taxes.
84.56	Collection of taxes.
84.64	Certificates of delinquency.
84.69	Refunds.

Chapter 84.04 DEFINITIONS

Sections

84.04.043	Repealed.
84.04.150	"Computer software" and allied terms.

84.04.043 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

84.04.150 "Computer software" and allied terms. (1) "Computer software" is a set of directions or instructions that exist in the form of machine-readable or human-readable code, is recorded on physical or electronic medium, and directs the operation of a computer system or other machinery or equipment. "Computer software" includes the associated documentation that describes the code and its use, operation, and maintenance and typically is delivered with the code to the user. "Computer software" does not include data bases.

A "data base" is text, data, or other information that may be accessed or managed with the aid of computer software but that does not itself have the capacity to direct the operation of a computer system or other machinery or equipment.

(2) "Custom computer software" is computer software that is designed for a single person's or a small group of persons' specific needs. "Custom computer software" includes modifications to canned computer software and can be developed in-house by the user, by outside developers, or by both.

A group of four or more persons is presumed not to be a small group of persons for the purposes of this subsection unless each of the persons is affiliated through common control and ownership. The department may by rule provide a definition of small group and affiliates consistent with this subsection.

For purposes of this subsection, "person" has the meaning given in RCW 82.04.030.

(3) "Canned computer software," occasionally known as prewritten or standard software, is computer software that is designed for and distributed "as is" for multiple persons who can use it without modifying its code and that is not otherwise considered custom computer software.

(4) "Embedded software" is computer software that resides permanently on some internal memory device in a computer system or other machinery or equipment, that is not removable in the ordinary course of operation, and that is of a type necessary for the routine operation of the computer system or other machinery or equipment. "Embedded software" may be either canned or custom computer software.

(5) "Retained rights" are any and all rights, including intellectual property rights such as those rights arising from copyrights, patents, and trade secret laws, that are owned or are held under contract or license by a computer software developer, author, inventor, publisher, licensor, sublicensor, or distributor.

(6) A "golden" or "master" copy of computer software is a copy of computer software from which a computer software developer, author, inventor, publisher, licensor, sublicensor, or distributor makes copies for sale or license. [1991 1st sp.s. c 29 § 2.]

Findings—Intent—1991 1st sp.s. c 29: "(1) The legislature finds that:

(a) Computer software is a class of personal property that is itself comprised of several different subclasses of personal property which can be distinguished by their use, development, distribution, and relationship to hardware, and includes custom software, canned software, and embedded software;

(b) Because different classes of software serve different needs, may be used by different taxpayers, and present different administrative burdens on both the state and the citizens of the state of Washington, the different classes of software should be treated differently for tax purposes;

(c) Canned software should continue to be subject to property tax, but, because of its rapid obsolescence, should be subject to tax for only two years; and the taxable interest should reside with the end user;

(d) Canned software that has been modified should continue to be taxable on the canned portion of the software;

(e) Embedded software should continue to be taxed as part of the machinery or equipment of which it is a part;

(f) Custom software should be exempt from taxation, in part because of the difficulty in accurately and uniformly determining the value of such software;

(g) Retained rights in computer software should be exempt from the property tax in part because of the difficulty in accurately and uniformly determining the value of such software, the difficulty in determining the scope and situs of such rights, and the adverse economic consequences to the state of taxing such rights; and

(h) So-called "golden" or "master" copies of software should be exempt from property tax like business inventory.

(2) It is the intent of the legislature that:

(a) The voluntary compliance nature of the personal property tax system should be preserved and nothing in this act shall be construed to reduce the taxpayer's obligation to fully and accurately list all taxable computer software;

(b) Computer software should be listed and assessed for property taxes payable in 1991 and 1992 in the same manner and to the same extent as computer software was listed and assessed for taxes due in 1989;

(c) The definition of custom software, golden or master copies, and retained rights shall be liberally construed in accordance with the purposes of this act;

(d) This act shall provide fairness, equity, and uniformity in the property tax treatment of each class of computer software in the state of Washington; and

(e) No inference should be taken from this act regarding the application of the property tax to data bases." [1991 1st sp.s. c 29 § 1.]

Severability—1991 1st sp.s. c 29: "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." [1991 1st sp.s. c 29 § 8.]

Application—Taxes collected in 1993—1991 1st sp.s. c 29: "Sections 2 through 4 and 6 of this act apply to taxes levied for collection in 1993, and thereafter." [1991 1st sp.s. c 29 § 9.]

Chapter 84.08

GENERAL POWERS AND DUTIES OF DEPARTMENT OF REVENUE

Sections

- 84.08.110 Repealed.
- 84.08.115 Department to prepare explanation of property tax system.

84.08.110 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

84.08.115 Department to prepare explanation of property tax system. (1) The department shall prepare a clear and succinct explanation of the property tax system, including but not limited to:

(a) The standard of true and fair value as the basis of the property tax.

(b) How the assessed value for particular parcels is determined.

(c) The procedures and timing of the assessment process.

(d) How district levy rates are determined, including the one hundred six percent limit.

(e) How the composite tax rate is determined.

(f) How the amount of tax is calculated.

(g) How a taxpayer may appeal an assessment, and what issues are appropriate as a basis of appeal.

(h) A summary of tax exemption and relief programs, along with the eligibility standards and application processes.

(2) Each county assessor shall provide copies of the explanation to taxpayers on request, free of charge. Each revaluation notice shall include information regarding the availability of the explanation. [1991 c 218 § 2.]

Effective date—1991 c 218: See note following RCW 36.21.015.

Chapter 84.09

GENERAL PROVISIONS

Sections

- 84.09.037 School district boundary changes.

84.09.037 School district boundary changes. Each school district affected by a transfer of territory from one school district to another school district under chapter 28A.315 RCW shall retain its preexisting boundaries for the purpose of the collection of excess tax levies authorized under RCW 84.52.053 before the effective date of the transfer, for such tax collection years and for such excess tax levies as the state board of education may approve and order that the transferred territory shall either be subject to or relieved of such excess levies, as the case may be. For the purpose of all other excess tax levies previously authorized under chapter 84.52 RCW and all excess tax levies authorized under RCW 84.52.053 subsequent to the effective date of a transfer of territory, the boundaries of the affected school districts shall be modified to recognize the transfer of territory subject to RCW 84.09.030. [1990 c 33 § 597; 1987 c 100 § 3.]

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

Chapter 84.26

HISTORIC PROPERTY

Sections

- 84.26.140 Repealed.

84.26.140 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 84.28
REFORESTATION LANDS

Sections
84.28.005 through 84.28.215 Decodified.

84.28.005 through 84.28.215 Decodified. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 84.33
TIMBER AND FOREST LANDS

Sections
84.33.010 Legislative findings.
84.33.020 Classification of timberlands.
84.33.041 State excise tax on harvesters of timber imposed—
Credit for county tax—Deposit of moneys in timber
tax distribution account.
84.33.160 Classification under chapter 84.28 RCW.

84.33.010 Legislative findings. As a result of the study and analysis of systems of taxation of standing timber and forest lands by the forest tax committee pursuant to Senate Concurrent Resolution No. 30 of the 41st session of the legislature, and the recommendations of the committee based thereon, the legislature hereby finds that:

(1) The public welfare requires that this state's system for taxation of timber and forest lands be modernized to assure the citizens of this state and its future generations the advantages to be derived from the continuous production of timber and forest products from the significant area of privately owned forests in this state. It is this state's policy to encourage forestry and restocking and reforestation of such forests so that present and future generations will enjoy the benefits which forest areas provide in enhancing water supply, in minimizing soil erosion, storm and flood damage to persons or property, in providing a habitat for wild game, in providing scenic and recreational spaces, in maintaining land areas whose forests contribute to the natural ecological equilibrium, and in providing employment and profits to its citizens and raw materials for products needed by everyone.

(2) The combination of variations in quantities, qualities and locations of timber and forest lands, the fact that market areas for timber products are nation-wide and world-wide and the unique long term nature of investment costs and risks associated with growing timber, all make exceedingly difficult the function of valuing and assessing timber and forest lands.

(3) The existing ad valorem property tax system is unsatisfactory for taxation of standing timber and forest land and will significantly frustrate, to an ever increasing degree with the passage of time, the perpetual enjoyment of the benefits enumerated above.

(4) For these reasons it is desirable, in exercise of the powers to promote the general welfare and to impose taxes; that

(a) the ad valorem system for taxing timber be modified and discontinued in stages over a three year period

during which such system will be replaced by one under which timber will be taxed on the basis of stumpage value at the time of harvest, and

(b) forest land remain under the ad valorem taxation system but be taxed only as provided in this chapter and RCW 28A.150.250. [1990 c 33 § 598; 1984 c 204 § 16; 1971 ex.s. c 294 § 1.]

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

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

84.33.020 Classification of timberlands. Lands not heretofore so classified, which are primarily devoted to and used for growing and harvesting timber are hereby classified as lands devoted to reforestation and such lands and timber shall be taxed in accordance with the provisions of this chapter and RCW 28A.150.250. [1990 c 33 § 599; 1984 c 204 § 17; 1971 ex.s. c 294 § 2.]

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

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

84.33.041 State excise tax on harvesters of timber imposed—Credit for county tax—Deposit of moneys in timber tax distribution account. (1) An excise tax is imposed on every person engaging in this state in business as a harvester of timber on privately or publicly owned land. The tax is equal to the stumpage value of timber harvested for sale or for commercial or industrial use multiplied by the rate provided in this chapter.

(2) A credit is allowed against the tax imposed under this section for any tax paid under RCW 84.33.051.

(3) Moneys received as payment for the tax imposed under this section and RCW 84.33.051 shall be deposited in the timber tax distribution account hereby established in the state treasury. [1991 1st sp.s. c 13 § 26; 1985 c 57 § 87; 1984 c 204 § 2.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

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

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

Use of collection agencies to collect taxes outside the state: RCW 82.32.265.

84.33.160 Classification under *chapter 84.28 RCW. Land approved for classification pursuant to *RCW 84.28.020 prior to May 21, 1971 under *chapter 84.28 RCW as reforestation lands, and the timber on such lands, shall be assessed and taxed in accordance with the applicable provision of *chapter 84.28 RCW and shall not be subject to this chapter and RCW 28A.150.250. However, after May 21, 1971, no additional land shall be classified under *chapter 84.28 RCW. [1990 c 33 § 600; 1983 c 3 § 225; 1971 ex.s. c 294 § 16.]

***Reviser's note:** Chapter 84.28 RCW was decodified by 1991 c 245 § 41.

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

Chapter 84.36
EXEMPTIONS

Sections	
84.36.010	Public property exempt.
84.36.030	Property used for character building, benevolent, protective or rehabilitative social services—Camp facilities—Veteran or relief organization owned property—Property of nonprofit organizations that issue debt for student loans or that are guarantee agencies.
84.36.041	Nonprofit homes for the aging.
84.36.043	Nonprofit organization property used in providing emergency or transitional housing to low-income homeless persons or victims of domestic violence.
84.36.381	Residences—Property tax exemptions—Qualifications.
84.36.383	Residences—Definitions.
84.36.600	Computer software.
84.36.805	Conditions for obtaining exemptions by nonprofit organizations, associations or corporations.
84.36.810	Cessation of use under which exemption granted—Collection of taxes.
84.36.815	Initial and renewal applications for exemption—Affidavit certifying exempt status—Exemption effective for following year.

84.36.010 Public property exempt. All property belonging exclusively to the United States, the state, any county or municipal corporation, and all property under a financing contract pursuant to chapter 39.94 RCW or recorded agreement granting immediate possession and use to said public bodies or under an order of immediate possession and use pursuant to RCW 8.04.090, shall be exempt from taxation. All property belonging exclusively to a foreign national government shall be exempt from taxation if such property is used exclusively as an office or residence for a consul or other official representative of such foreign national government, and if the consul or other official representative is a citizen of such foreign nation. [1990 c 47 § 2; 1971 ex.s. c 260 § 1; 1969 c 34 § 1. Prior: 1967 ex.s. c 149 § 31; 1967 ex.s. c 145 § 35; 1961 c 15 § 84.36.010; prior: 1955 c 196 § 3; prior: 1939 c 206 § 8, part; 1933 ex.s. c 19 § 1, part; 1933 c 115 § 1, part; 1929 c 126 § 1, part; 1925 ex.s. c 130 § 7, part; 1915 c 131 § 1, part; 1903 c 178 § 1, part; 1901 c 176 § 1, part; 1899 c 141 § 2, part; 1897 c 71 §§ 1, 5, part; 1895 c 176 § 2, part; 1893 c 124 §§ 1, 5, part; 1891 c 140 §§ 1, 5, part; 1890 p 532 §§ 1, 5, part; 1886 p 47 § 1, part; Code 1881 § 2829, part; 1871 p 37 § 4, part; 1869 p 176 § 4, part; 1867 p 61 § 2, part; 1854 p 331 § 2, part; RRS § 11111, part. Formerly RCW 84.40.010.]

84.36.030 Property used for character building, benevolent, protective or rehabilitative social services—Camp facilities—Veteran or relief organization owned property—Property of nonprofit organizations that issue debt for student loans or that are guarantee agencies. The following real and personal property shall be exempt from taxation:

(1) Property owned by nonprofit organizations or associations, organized and conducted for nonsectarian purposes, which shall be used for character-building,

benevolent, protective or rehabilitative social services directed at persons of all ages. The sale of donated merchandise shall not be considered a commercial use of the property under this section if the proceeds are devoted to the furtherance of the purposes of the selling organization or association as specified in this paragraph.

(2) Property owned by any nonprofit church, denomination, group of churches, or an organization or association, the membership of which is comprised solely of churches or their qualified representatives, which is utilized as a camp facility if used for organized and supervised recreational activities and church purposes as related to such camp facilities. The exemption provided by this paragraph shall apply to a maximum of two hundred acres of any such camp as selected by the church, including buildings and other improvements thereon.

(3) Property, including buildings and improvements required for the maintenance and safeguarding of such property, owned by nonprofit organizations or associations engaged in character building of boys and girls under eighteen years of age, and used for such purposes and uses, provided such purposes and uses are for the general public good: PROVIDED, That if existing charters provide that organizations or associations, which would otherwise qualify under the provisions of this paragraph, serve boys and girls up to the age of twenty-one years, then such organizations or associations shall be deemed qualified pursuant to this section.

(4) Property owned by all organizations and societies of veterans of any war of the United States, recognized as such by the department of defense, which shall have national charters, and which shall have for their general purposes and objects the preservation of the memories and associations incident to their war service and the consecration of the efforts of their members to mutual helpfulness and to patriotic and community service to state and nation. To be exempt such property must be used in such manner as may be reasonably necessary to carry out the purposes and objects of such societies.

The use of the property for pecuniary gain or to promote business activities, except fund raising activities conducted by a nonprofit organization, nullifies the exemption otherwise available for the property for the assessment year.

(5) Property owned by all corporations, incorporated under any act of congress, whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities and to devise and carry on measures for preventing the same.

(6) Property owned by nonprofit organizations exempt from federal income tax under section 501(c)(3) of the internal revenue code of 1954, as amended, that are guarantee agencies under the federal guaranteed student loan program or that issue debt to provide or acquire student loans.

(7) To be exempt under this section, the property must be used exclusively for the purposes for which exemption is granted, except as provided in RCW 84.36-.805. [1990 c 283 § 6; 1987 c 433 § 2; 1984 c 220 § 1; 1983 1st ex.s. c 25 § 1; 1973 2nd ex.s. c 40 § 2. Prior: 1971 ex.s. c 292 § 70; 1971 ex.s. c 64 § 1; 1969 c 137 § 1; 1961 c 15 § 84.36.030; prior: 1955 c 196 § 5; prior: (i) 1939 c 206 § 8, part; 1933 ex.s. c 19 § 1, part; 1933 c 115 § 1, part; 1929 c 126 § 1, part; 1925 ex.s. c 130 § 7, part; 1915 c 131 § 1, part; 1903 c 178 § 1, part; 1901 c 176 § 1, part; 1899 c 141 § 2, part; 1897 c 71 §§ 1, 5, part; 1895 c 176 § 2, part; 1893 c 124 §§ 1, 5, part; 1891 c 140 §§ 1, 5, part; 1890 p 532 §§ 1, 5, part; 1886 p 47 § 1, part; Code 1881 § 2829, part; 1871 p 37 § 4, part; 1869 p 176 § 4, part; 1867 p 61 § 2, part; 1854 p 331 § 2, part; RRS § 11111, part. (ii) 1945 c 109 § 1; Rem. Supp. 1945 § 11111a.]

Construction—1990 c 283: "Sections 6 and 7 of this act shall not be construed as modifying or affecting any other existing or future exemptions." [1990 c 283 § 8.]

Applicability—1983 1st ex.s. c 25: "This act is effective for property taxes levied in calendar year 1983 and due and payable in calendar year 1984 and thereafter." [1983 1st ex.s. c 25 § 2.]

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

84.36.041 Nonprofit homes for the aging. (1) All real and personal property used by a nonprofit home for the aging that is reasonably necessary for the purposes of the home is exempt from taxation if the benefit of the exemption inures to the home and:

(a) At least fifty percent of the occupied dwelling units in the home are occupied by eligible residents; or

(b) The home is subsidized under a federal department of housing and urban development program. The department of revenue shall provide by rule a definition of homes eligible for exemption under this subsection (b), consistent with the purposes of this section.

(2) A home for the aging is eligible for a partial exemption if the home does not meet the requirements of subsection (1) of this section because fewer than fifty percent of the occupied dwelling units are occupied by eligible residents. The amount of exemption shall be calculated by multiplying the assessed value of the property reasonably necessary for the purposes of the home by a fraction. The numerator of the fraction is the number of dwelling units occupied by eligible persons multiplied by two. The denominator of the fraction is the total number of occupied dwelling units. The fraction shall never exceed one.

(3) To be exempt under this section, the property must be used exclusively for the purposes for which the exemption is granted, except as provided in RCW 84.36.805.

(4) A home for the aging is exempt from taxation only if the organization operating the home is exempt from income tax under section 501(c) of the federal internal revenue code as existing on January 1, 1989, or such subsequent date as the director may provide by rule consistent with the purposes of this section.

(5) Each eligible resident of a home for the aging shall submit the form required under RCW 84.36.385 to

the county assessor by July 1st of the assessment year. An eligible resident who has filed a form for a previous year need not file a new form until there is a change in status affecting the person's eligibility.

(6) In determining the true and fair value of a home for the aging for purposes of the partial exemption provided by subsection (2) of this section, the assessor shall apply the computation method provided by RCW 84.34-.060 and shall consider only the use to which such property is applied during the years for which such partial exemptions are available and shall not consider potential uses of such property.

(7) A home for the aging that was exempt for taxes levied for collection in 1990 and is not fully exempt under this section is entitled to partial exemptions as follows:

(a) For taxes levied for collection in 1991 and 1992, two-thirds of the assessed value that would otherwise be subject to tax under this section is exempt from taxation.

(b) For taxes levied for collection in 1993, one-third of the assessed value that would otherwise be subject to tax under this section is exempt from taxation.

(8) As used in this section:

(a) "Eligible resident" means a person who would be eligible for an exemption of regular property taxes under RCW 84.36.381 if the person owned a single-family dwelling. For the purposes of determining eligibility under this section, a "cotentant" as used in RCW 84.36.383 means a person who resides with an eligible resident and who shares personal financial resources with the eligible resident.

(b) "Home for the aging" means a residential housing facility that (i) provides a housing arrangement chosen voluntarily by the resident, the resident's guardian or conservator, or another responsible person; (ii) has only residents who are at least sixty-two years of age or who have needs for care generally compatible with persons who are at least sixty-two years of age; and (iii) provides varying levels of care and supervision, as agreed to at the time of admission or as determined necessary at subsequent times of reappraisal. [1991 1st sp.s. c 24 § 1; 1991 c 203 § 2; 1989 c 379 § 2.]

Severability—Effective date—1989 c 379: See notes following RCW 84.36.040.

84.36.043 Nonprofit organization property used in providing emergency or transitional housing to low-income homeless persons or victims of domestic violence.

(1) The real and personal property used by a nonprofit organization in providing emergency or transitional housing for low-income homeless persons as defined in RCW 35.21.685 or 36.32.415 or victims of domestic violence who are homeless for personal safety reasons is exempt from taxation if:

(a) The charge, if any, for the housing does not exceed the actual cost of operating and maintaining the housing; and

(b)(i) The property is owned by the nonprofit organization; or

(ii) For taxes levied for collection in 1991 through 1999 only, the property is rented or leased by the nonprofit organization and the benefit of the exemption inures to the nonprofit organization.

(2) As used in this section:

(a) "Homeless" means persons, including families, who, on one particular day or night, do not have decent and safe shelter nor sufficient funds to purchase or rent a place to stay.

(b) "Emergency housing" means a project that provides housing and supportive services to homeless persons or families for up to sixty days.

(c) "Transitional housing" means a project that provides housing and supportive services to homeless persons or families for up to two years and that has as its purpose facilitating the movement of homeless persons and families into independent living.

(3) This exemption is subject to the administrative provisions contained in RCW 84.36.800 through 84.36.865. [1991 c 198 § 1; 1990 c 283 § 2; 1983 1st ex.s. c 55 § 12.]

Effective dates—1983 1st ex.s. c 55: See note following RCW 82.08.010.

84.36.381 Residences—Property tax exemptions—Qualifications. A person shall be exempt from any legal obligation to pay all or a portion of the amount of excess and regular real property taxes due and payable in the year following the year in which a claim is filed, and thereafter, in accordance with the following:

(1) The property taxes must have been imposed upon a residence which was occupied by the person claiming the exemption as a principal place of residence as of January 1st of the year for which the exemption is claimed: PROVIDED, That any person who sells, transfers, or is displaced from his or her residence may transfer his or her exemption status to a replacement residence, but no claimant shall receive an exemption on more than one residence in any year: PROVIDED FURTHER, That confinement of the person to a hospital or nursing home shall not disqualify the claim of exemption if the residence is temporarily unoccupied or if the residence is occupied by a spouse and/or a person financially dependent on the claimant for support;

(2) The person claiming the exemption must have owned, at the time of filing, in fee, as a life estate, or by contract purchase, the residence on which the property taxes have been imposed or if the person claiming the exemption lives in a cooperative housing association, corporation, or partnership, such person must own a share therein representing the unit or portion of the structure in which he or she resides. For purposes of this subsection, a residence owned by a marital community or owned by cotenants shall be deemed to be owned by each spouse or cotenant, and any lease for life shall be deemed a life estate;

(3) The person claiming the exemption must be sixty-one years of age or older on December 31st of the year in which the exemption claim is filed, or must have been, at the time of filing, retired from regular gainful employment by reason of physical disability: PROVIDED,

That any surviving spouse of a person who was receiving an exemption at the time of the person's death shall qualify if the surviving spouse is fifty-seven years of age or older and otherwise meets the requirements of this section;

(4) The amount that the person shall be exempt from an obligation to pay shall be calculated on the basis of combined disposable income, as defined in RCW 84.36.383. If the person claiming the exemption was retired for two months or more of the preceding year, the combined disposable income of such person shall be calculated by multiplying the average monthly combined disposable income of such person during the months such person was retired by twelve.

(5)(a) A person who otherwise qualifies under this section and has a combined disposable income of twenty-six thousand dollars or less shall be exempt from all excess property taxes; and

(b)(i) A person who otherwise qualifies under this section and has a combined disposable income of eighteen thousand dollars or less but greater than fifteen thousand dollars shall be exempt from all regular property taxes on the greater of thirty thousand dollars or thirty percent of the valuation of his or her residence, but not to exceed fifty thousand dollars of the valuation of his or her residence; or

(ii) A person who otherwise qualifies under this section and has a combined disposable income of fifteen thousand dollars or less shall be exempt from all regular property taxes on the greater of thirty-four thousand dollars or fifty percent of the valuation of his or her residence. [1991 c 213 § 3; 1991 c 203 § 1; 1987 c 301 § 1; 1983 1st ex.s. c 11 § 5; 1983 1st ex.s. c 11 § 2; 1980 c 185 § 4; 1979 ex.s. c 214 § 1; 1977 ex.s. c 268 § 1; 1975 1st ex.s. c 291 § 14; 1974 ex.s. c 182 § 1.]

Reviser's note: This section was amended by 1991 c 203 § 1 and by 1991 c 213 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Applicability—1991 c 213: See note following RCW 84.38.020.

Applicability—1991 c 203: "Section 1 of this act shall be effective for taxes levied for collection in 1992 and thereafter." [1991 c 203 § 5.]

Applicability—1987 c 301: "This act shall be effective for taxes levied for collection in 1989 and thereafter." [1987 c 301 § 2.]

Intent—1983 1st ex.s. c 11: "The legislature finds that inflation has significant detrimental effects on the senior citizen property tax relief program. Inflation increases incomes without increasing real buying power. Inflation also raises the values of homes, and thus the taxes on those homes. This act addresses the problem of inflation in two ways. First, the assessed value exemption is tied to home value so it will increase as values rise. Secondly, though the income of most senior citizens does not keep pace with inflation, it is the legislature's intent that inflationary increases in incomes will not result in program disqualification. Therefore, the income levels are adjusted to reflect the forecasted increase in inflation. The legislature also recommends that similar adjustments be examined by future legislatures." [1983 1st ex.s. c 11 § 1.]

Applicability—1983 1st ex.s. c 11: "This act applies to taxes first due in 1984 and thereafter." [1983 1st ex.s. c 11 § 7.]

Effective dates—1983 1st ex.s. c 11: "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 [May 11, 1983], except sections 5 and 6 of this act shall take effect January 1, 1984." [1983 1st ex.s. c 11 § 8.]

For codification of 1983 1st ex.s. c 11, see Codification Tables, Volume 0.

Applicability—1980 c 185: See note following RCW 84.36.379.

Applicability—1979 ex.s. c 214: "The exemption created by sections 1 through 4 of this act shall be effective starting with property taxes levied in calendar year 1979 for collection in calendar year 1980. The former exemption created by the law amended shall continue to be effective with respect to property taxes levied in calendar year 1978 for collection in calendar year 1979." [1979 ex.s. c 214 § 10.] For codification of 1979 ex.s. c 214, see Codification Tables, Volume 0.

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

Severability—1974 ex.s. c 182: "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 182 § 8.]

84.36.383 Residences—Definitions. As used in RCW 84.36.381 through 84.36.389, except where the context clearly indicates a different meaning:

(1) The term "residence" shall mean a single family dwelling unit whether such unit be separate or part of a multiunit dwelling, including the land on which such dwelling stands not to exceed one acre. The term shall also include a share ownership in a cooperative housing association, corporation, or partnership if the person claiming exemption can establish that his or her share represents the specific unit or portion of such structure in which he or she resides. The term shall also include a single family dwelling situated upon lands the fee of which is vested in the United States or any instrumentality thereof including an Indian tribe or in the state of Washington, and notwithstanding the provisions of RCW 84.04.080, 84.04.090 or *84.40.250, such a residence shall be deemed real property.

(2) The term "real property" shall also include a mobile home which has substantially lost its identity as a mobile unit by virtue of its being fixed in location upon land owned or leased by the owner of the mobile home and placed on a foundation (posts or blocks) with fixed pipe, connections with sewer, water, or other utilities: PROVIDED, That a mobile home located on land leased by the owner of the mobile home shall be subject, for tax billing, payment, and collection purposes, only to the personal property provisions of chapter 84.56 RCW and RCW 84.60.040.

(3) The term "preceding calendar year" shall mean the calendar year preceding the year in which the claim for exemption is to be made.

(4) "Department" shall mean the state department of revenue.

(5) "Combined disposable income" means the disposable income of the person claiming the exemption, plus the disposable income of his or her spouse, and the disposable income of each cotenant occupying the residence for the preceding calendar year, less amounts paid by the person claiming the exemption or his or her spouse during the previous year for the treatment or care of either person received in the home or in a nursing home.

(6) "Disposable income" means adjusted gross income as defined in the federal internal revenue code, as amended prior to January 1, 1989, or such subsequent date as the director may provide by rule consistent with

the purpose of this section, plus all of the following items to the extent they are not included in or have been deducted from adjusted gross income:

(a) Capital gains, other than nonrecognized gain on the sale of a principal residence under section 1034 of the federal internal revenue code, or gain excluded from income under section 121 of the federal internal revenue code to the extent it is reinvested in a new principal residence;

(b) Amounts deducted for loss;

(c) Amounts deducted for depreciation;

(d) Pension and annuity receipts;

(e) Military pay and benefits other than attendant-care and medical-aid payments;

(f) Veterans benefits other than attendant-care and medical-aid payments;

(g) Federal social security act and railroad retirement benefits;

(h) Dividend receipts; and

(i) Interest received on state and municipal bonds.

(7) "Cotenant" means a person who resides with the person claiming the exemption and who has an ownership interest in the residence. [1991 c 213 § 4; 1991 c 219 § 1; 1989 c 379 § 6; 1987 c 155 § 2; 1985 c 395 § 3; 1983 1st ex.s. c 11 § 4; 1980 c 185 § 5; 1979 ex.s. c 214 § 2; 1975 1st ex.s. c 291 § 15; 1974 ex.s. c 182 § 2.]

*Reviser's note: RCW 84.40.250 was repealed by 1991 c 245 § 43.

Applicability—1991 c 219: "This act is effective for taxes levied for collection in 1992 and thereafter." [1991 c 219 § 2.]

Applicability—1991 c 213: See note following RCW 84.38.020.

Severability—Effective date—1989 c 379: See notes following RCW 84.36.040.

Intent—Applicability—Effective dates—1983 1st ex.s. c 11: See notes following RCW 84.36.381.

Applicability—1980 c 185: See note following RCW 84.36.379.

Applicability—1979 ex.s. c 214: See note following RCW 84.36.381.

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

84.36.600 Computer software. (1) All custom computer software, except embedded software, is exempt from property taxation.

(2) Retained rights in computer software are exempt from property taxation.

(3) Modifications to canned software are exempt from property taxation, but the underlying canned software remains subject to taxation as provided in RCW 84.40.037.

(4) Master or golden copies of computer software are exempt from property taxation. [1991 1st sp.s. c 29 § 3.]

Study—1991 1st sp.s. c 29: "(1) The department of revenue shall conduct a study of the property tax exemptions and valuation rules provided for computer software in sections 3 and 4 of this act. In the study, the department shall determine whether the exemptions and valuation rules are reasonably necessary and appropriate to achieve fairness, equity, and uniformity in the property tax treatment of computer software. The study shall also include a review of computer software taxation in other states, techniques for valuing computer software, and the effects of changing technology upon the appropriate application of property taxation to computer software.

(2) To assist in the performance of the study, the department shall form an advisory committee with appropriate representation from businesses and county assessors.

(3) The department shall report the findings of the study to the committees of the legislature that deal with revenue matters no later than November 30, 1998." [1991 1st sp.s. c 29 § 5.]

Findings, intent—Severability—Application—1991 1st sp.s. c 29: See notes following RCW 84.04.150.

84.36.805 Conditions for obtaining exemptions by nonprofit organizations, associations or corporations. In order to be exempt pursuant to RCW 84.36.030, 84.36.035, 84.36.037, 84.36.040, 84.36.041, 84.36.043, 84.36.045, 84.36.047, 84.36.050, 84.36.060, 84.36.350, and 84.36.480, the nonprofit organizations, associations or corporations shall satisfy the following conditions:

(1) The property is used exclusively for the actual operation of the activity for which exemption is granted, unless otherwise provided, and does not exceed an amount reasonably necessary for that purpose, except:

(a) The loan or rental of the property does not subject the property to tax if:

(i) The rents and donations received for the use of the portion of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; and

(ii) Except for the exemptions under RCW 84.36.030(4) and 84.36.037, the property would be exempt from tax if owned by the organization to which it is loaned or rented;

(b) The use of the property for fund-raising activities does not subject the property to tax if the fund-raising activities are consistent with the purposes for which the exemption is granted;

(2) The property is irrevocably dedicated to the purpose for which exemption has been granted, and on the liquidation, dissolution, or abandonment by said organization, association, or corporation, said property will not inure directly or indirectly to the benefit of any shareholder or individual, except a nonprofit organization, association, or corporation which too would be entitled to property tax exemption: **PROVIDED**, That the property need not be irrevocably dedicated if it is leased or rented to those qualified for exemption pursuant to RCW 84.36.040, 84.36.041, or 84.36.043 or those qualified for exemption as an association engaged in the production or performance of musical, dance, artistic, dramatic, or literary works pursuant to RCW 84.36.060, but only if under the terms of the lease or rental agreement the nonprofit organization, association, or corporation receives the benefit of the exemption;

(3) The facilities and services are available to all regardless of race, color, national origin or ancestry;

(4) The organization, association, or corporation is duly licensed or certified where such licensing or certification is required by law or regulation;

(5) Property sold to organizations, associations, or corporations with an option to be repurchased by the seller shall not qualify for exempt status;

(6) The director of the department of revenue shall have access to its books in order to determine whether such organization, association, or corporation is exempt from taxes within the intent of RCW 84.36.030, 84.36.035, 84.36.037, 84.36.040, 84.36.041, 84.36.043, 84.36.045, 84.36.047, 84.36.050, 84.36.060, 84.36.350, and

84.36.480. [1990 c 283 §§ 3 and 7; 1989 c 379 § 4; 1987 c 468 § 1; 1984 c 220 § 7; 1981 c 141 § 4; 1973 2nd ex.s. c 40 § 7.]

Reviser's note: This section was amended by 1990 c 283 § 3 and by 1990 c 283 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Construction—1990 c 283: See note following RCW 84.36.030.

Severability—Effective date—1989 c 379: See notes following RCW 84.36.040.

Applicability—1987 c 468: "This act shall be effective for taxes levied for collection in 1988 and thereafter." [1987 c 468 § 3.]

Applicability, construction—1981 c 141: See note following RCW 84.36.060.

84.36.810 Cessation of use under which exemption granted—Collection of taxes. (1) Upon cessation of a use under which an exemption has been granted pursuant to RCW 84.36.030, 84.36.037, 84.36.040, 84.36.041, 84.36.043, 84.36.050, and 84.36.060, the county treasurer shall collect all taxes which would have been paid had the property not been exempt during the three years preceding, or the life of such exemption, if such be less, together with the interest at the same rate and computed in the same way as that upon delinquent property taxes: **PROVIDED**, That where the property has been granted an exemption for more than ten years, taxes and interest shall not be assessed under this section.

(2) Subsection (1) of this section applies only when ownership of the property is transferred or when fifty-one percent or more of the area of the property has lost its exempt status. The additional tax under subsection (1) of this section shall not be imposed if the cessation of use resulted solely from:

(a) Transfer to a nonprofit organization, association, or corporation for a use which also qualifies and is granted exemption under the provisions of chapter 84.36 RCW;

(b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power;

(c) Official action by an agency of the state of Washington or by the county or city within which the property is located which disallows the present use of such property;

(d) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the organization, association, or corporation changing the use of such property;

(e) Relocation of the activity and use of another location or site except for undeveloped properties of camp facilities exempted under RCW 84.36.030;

(f) Cancellation of a lease on property that had been exempt under RCW 84.36.040, 84.36.041, 84.36.043, or 84.36.060;

(g) A change in the exempt portion of a home for the aging under RCW 84.36.041(2), as long as some portion of the home remains exempt;

(h) The conversion of a full exemption of a home for the aging to a partial exemption or taxable status under RCW 84.36.041(7). [1990 c 283 § 4; 1989 c 379 § 5;

1987 c 468 § 2; 1984 c 220 § 8; 1983 c 185 § 1; 1981 c 141 § 5; 1977 ex.s. c 209 § 1; 1973 2nd ex.s. c 40 § 8.]

Severability—Effective date—1989 c 379: See notes following RCW 84.36.040.

Applicability—1987 c 468: See note following RCW 84.36.805.

Applicability, construction—1981 c 141: See note following RCW 84.36.060.

84.36.815 Initial and renewal applications for exemption—Affidavit certifying exempt status—Exemption effective for following year. In order to qualify for exempt status for any real or personal property under this chapter except personal property under RCW 84.36.600, all foreign national governments, churches, cemeteries, nongovernmental nonprofit corporations, organizations, and associations, private schools or colleges, and soil and water conservation districts shall file an initial application on or before March 31 with the state department of revenue. All applications shall be filed on forms prescribed by the department and shall be signed by an authorized agent of the applicant.

In order to requalify for exempt status, such applicants except nonprofit cemeteries shall file a renewal application on or before March 31 of the fourth year following the date of such initial application and on or before March 31 of every fourth year thereafter. An applicant previously granted exemption shall annually file, on forms prescribed by the department, an affidavit certifying the exempt status of the real or personal property owned by the exempt organization. When an organization acquires real property qualified for exemption or converts real property to exempt status, such organization shall file an initial application for the property within sixty days following the acquisition or conversion. If the application is filed after the expiration of the sixty-day period a late filing penalty shall be imposed pursuant to RCW 84.36.825, as now or hereafter amended.

When organizations acquire real property qualified for exemption or convert real property to an exempt use, the property, upon approval of the application for exemption, is entitled to a property tax exemption for property taxes due and payable the following year. If the owner has paid taxes for the year following the year the property qualified for exemption, the owner is entitled to a refund of the amount paid on the property so acquired or converted. [1991 1st sp.s. c 29 § 6; 1988 c 131 § 1; 1984 c 220 § 10; 1975 1st ex.s. c 291 § 18; 1973 2nd ex.s. c 40 § 9.]

Findings, intent—Severability—Application—1991 1st sp.s. c 29: See notes following RCW 84.04.150.

Study—1991 1st sp.s. c 29: See note following RCW 84.36.600.

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

Chapter 84.38

DEFERRAL OF SPECIAL ASSESSMENTS AND/OR PROPERTY TAXES

Sections

84.38.020 Definitions.

84.38.030 Conditions and qualifications for claiming deferral.

84.38.020 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) "Claimant" means a person who either elects or is required under *RCW 84.64.030 or 84.64.050 to defer payment of the special assessments and/or real property taxes accrued on the claimant's residence by filing a declaration to defer as provided by this chapter.

When two or more individuals of a household file or seek to file a declaration to defer, they may determine between them as to who the claimant shall be.

(2) "Department" means the state department of revenue.

(3) "Equity value" means the amount by which the fair market value of a residence as determined from the records of the county assessor exceeds the total amount of any liens or other obligations against the property.

(4) "Special assessment" means the charge or obligation imposed by a city, town, county, or other municipal corporation upon property specially benefited by a local improvement, including assessments under chapters 35-.44, 36.88, 36.94, 53.08, 54.16, 56.20, 57.16, 86.09, and 87.03 RCW and any other relevant chapter.

(5) "Real property taxes" means ad valorem property taxes levied on a residence in this state in the preceding calendar year. [1991 c 213 § 1; 1984 c 220 § 20; 1979 ex.s. c 214 § 5; 1975 1st ex.s. c 291 § 27.]

*Reviser's note: RCW 84.64.030 was repealed by 1991 c 245 § 42.

Applicability—1991 c 213: "Sections 1 and 2 of this act shall be effective for taxes levied for collection in 1991 and thereafter. Sections 3 and 4 of this act shall be effective for taxes levied for collection in 1992 and thereafter." [1991 c 213 § 6.]

84.38.030 Conditions and qualifications for claiming deferral. A claimant may defer payment of special assessments and/or real property taxes on up to eighty percent of the amount of the claimant's equity value in the claimant's residence if the following conditions are met:

(1) The claimant must meet all requirements for an exemption for the residence under RCW 84.36.381, other than the income limits.

(2) The claimant must have a combined disposable income, as defined in RCW 84.36.383, of thirty thousand dollars or less.

(3) The claimant must have owned, at the time of filing, the residence on which the special assessment and/or real property taxes have been imposed. For purposes of this subsection, a residence owned by a marital community or owned by cotenants shall be deemed to be owned by each spouse or cotenant. A claimant who has only a share ownership in cooperative housing, a life estate, a lease for life, or a revocable trust does not satisfy the ownership requirement.

(4) The claimant must have and keep in force fire and casualty insurance in sufficient amount to protect the interest of the state in the claimant's equity value: PROVIDED, That if the claimant fails to keep fire and casualty insurance in force to the extent of the state's

interest in the claimant's equity value, the amount deferred shall not exceed one hundred percent of the claimant's equity value in the land or lot only.

(5) In the case of special assessment deferral, the claimant must have opted for payment of such special assessments on the installment method if such method was available. [1991 c 213 § 2; 1988 c 222 § 11; 1984 c 220 § 21; 1979 ex.s. c 214 § 6; 1975 1st ex.s. c 291 § 28.]

Applicability—1991 c 213: See note following RCW 84.38.020.

**Chapter 84.40
LISTING OF PROPERTY**

Sections	
84.40.037	Valuation of computer software—Embedded software.
84.40.100	Repealed.
84.40.250	Repealed.
84.40.330	Repealed.

84.40.037 Valuation of computer software—Embedded software. (1) Computer software, except embedded software, shall be valued in the first year of taxation at one hundred percent of the acquisition cost of the software and in the second year at fifty percent of the acquisition cost. Computer software, other than embedded software, shall have no value for purposes of property taxation after the second year.

(2) Embedded software is a part of the computer system or other machinery or equipment in which it is housed and shall be valued in the same manner as the machinery or equipment. [1991 1st sp.s. c 29 § 4.]

Findings, intent—Severability—Application—1991 1st sp.s. c 29: See notes following RCW 84.04.150.

Study—1991 1st sp.s. c 29: See note following RCW 84.36.600.

84.40.100 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

84.40.250 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

84.40.330 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

**Chapter 84.40A
LISTING OF LEASEHOLD ESTATES**

Sections	
84.40A.020	through 84.40A.050 Repealed.

84.40A.020 through 84.40A.050 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

**Chapter 84.44
TAXABLE SITUS**

Sections	
84.44.040	Repealed.
84.44.060	Repealed.
84.44.070	Repealed.

84.44.040 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

84.44.060 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

84.44.070 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

**Chapter 84.48
EQUALIZATION OF ASSESSMENTS**

Sections	
84.48.080	Equalization of assessments—Taxes for state purposes—Procedure—Levy and apportionment—Record.

84.48.080 Equalization of assessments—Taxes for state purposes—Procedure—Levy and apportionment—Record. Annually during the months of September and October, the department of revenue shall examine and compare the returns of the assessment of the property in the several counties of the state, and the assessment of the property of railroad and other companies assessed by the department, and proceed to equalize the same, so that each county in the state shall pay its due and just proportion of the taxes for state purposes for such assessment year, according to the ratio the valuation of the property in each county bears to the total valuation of all property in the state.

First. The department shall classify all property, real and personal, and shall raise and lower the valuation of any class of property in any county to a value that shall be equal, so far as possible, to the true and fair value of such class as of January 1st of the current year for the purpose of ascertaining the just amount of tax due from each county for state purposes. In equalizing personal property as of January 1st of the current year, the department shall use the assessment level of the preceding year. Such classification may be on the basis of types of property, geographical areas, or both.

Second. The department shall keep a full record of its proceedings and the same shall be published annually by the department.

The department shall levy the state taxes authorized by law: PROVIDED, That the amount levied in any one year for general state purposes shall not exceed the lawful dollar rate on the dollar of the assessed value of the property of the entire state, which assessed value shall be one hundred percent of the true and fair value of such

property in money. The department shall apportion the amount of tax for state purposes levied by the department, among the several counties, in proportion to the valuation of the taxable property of the county for the year as equalized by the department: PROVIDED, That for purposes of this apportionment, the department shall recompute the previous year's levy and the apportionment thereof to correct for changes and errors in taxable values reported to the department after October 1 of the preceding year and shall adjust the apportioned amount of the current year's state levy for each county by the difference between the apportioned amounts established by the original and revised levy computations for the previous year. For purposes of this section, changes in taxable values mean a final adjustment made by a county board of equalization, the state board of tax appeals, or a court of competent jurisdiction and shall include additions of omitted property, other additions or deletions from the assessment or tax rolls, or a change in the indicated ratio of a county. Errors in taxable values mean errors corrected by a final reviewing body.

The department shall have authority to adopt rules and regulations to enforce obedience to its orders in all matters in relation to the returns of county assessments, the equalization of values, and the apportionment of the state levy by the department.

After the completion of the duties hereinabove prescribed, the director of the department shall certify the record of the proceedings of the department under this section, the tax levies made for state purposes and the apportionment thereof among the counties, and the certification shall be available for public inspection. [1990 c 283 § 1; 1988 c 222 § 24; 1982 1st ex.s. c 28 § 1; 1979 ex.s. c 86 § 3; 1973 1st ex.s. c 195 § 99; 1971 ex.s. c 288 § 9; 1961 c 15 § 84.48.080. Prior: 1949 c 66 § 1; 1939 c 206 § 36; 1925 ex.s. c 130 § 70; Rem. Supp. 1949 § 11222; prior: 1917 c 55 § 1; 1915 c 7 § 1; 1907 c 215 § 1; 1899 c 141 § 4; 1897 c 71 § 60; 1893 c 124 § 61; 1890 p 557 § 75. Formerly RCW 84.48.080, 84.48.090 and 84.48.100.]

Severability—1982 1st ex.s. c 28: "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." [1982 1st ex.s. c 28 § 3.]

Severability—1979 ex.s. c 86: See note following RCW 13.24.040.

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

Savings—**Severability**—1971 ex.s. c 288: See notes following RCW 84.40.030.

Chapter 84.52 LEVY OF TAXES

Sections

84.52.010	How levied—Effect of constitutional and statutory limitations.
84.52.043	Limitations upon regular property tax levies.
84.52.052	Excess levies authorized—When—Procedure.
84.52.0531	Excess levies by school districts—Maximum dollar amount for maintenance and operation support—Restrictions—Maximum levy percentage—Levy reduction funds.
84.52.065	State levy for support of common schools.

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84.52.110	Public hospital districts and metropolitan park districts—Levy authority. (Effective until December 31, 1996.)

84.52.010 How levied—Effect of constitutional and statutory limitations. Except as is permitted under RCW 84.55.050, all taxes shall be levied or voted in specific amounts.

The rate percent of all taxes for state and county purposes, and purposes of taxing districts coextensive with the county, shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the county, as shown by the completed tax rolls of the county, and the rate percent of all taxes levied for purposes of taxing districts within any county shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the taxing districts respectively.

When a county assessor finds that the aggregate rate of tax levy on any property, that is subject to the limitations set forth in RCW 84.52.043 or 84.52.050, as now or hereafter amended, exceeds the limitations provided in either of these sections, the assessor shall recompute and establish a consolidated levy in the following manner:

(1) The full certified rates of tax levy for state, county, county road district, and city or town purposes shall be extended on the tax rolls in amounts not exceeding the limitations established by law, subject to subsection (2)(e) of this section; however any state levy shall take precedence over all other levies and shall not be reduced for any purpose other than that required by RCW 84.55.010; and

(2) The certified rates of tax levy subject to these limitations by all junior taxing districts imposing taxes on such property shall be reduced or eliminated as follows to bring the consolidated levy of taxes on such property within the provisions of these limitations:

(a) First, the certified property tax levy rates of those junior taxing districts authorized under RCW 36.68.525, 36.69.145, and 67.38.130 shall be reduced on a pro rata basis or eliminated;

(b) Second, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of flood control zone districts shall be reduced on a pro rata basis or eliminated;

(c) Third, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of all other junior taxing districts, other than fire protection districts, library districts, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts, and the first fifty cent per thousand dollars of assessed valuation levies for public hospital districts, shall be reduced on a pro rata basis or eliminated;

(d) Fourth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy

rates authorized to fire protection districts under RCW 52.16.140 and 52.16.160 shall be reduced on a pro rata basis or eliminated; and

(e) Fifth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized for fire protection districts under RCW 52.16.130, library districts, metropolitan park districts under their first fifty cent per thousand dollars of assessed valuation levy, and public hospital districts under their first fifty cent per thousand dollars of assessed valuation levy, shall be reduced on a pro rata basis or eliminated. [1990 c 234 § 4; 1988 c 274 § 7; 1987 c 255 § 1; 1973 1st ex.s. c 195 § 101; 1973 1st ex.s. c 195 § 146; 1971 ex.s. c 243 § 6; 1970 ex.s. c 92 § 4; 1961 c 15 § 84.52-.010. Prior: 1947 c 270 § 1; 1925 ex.s. c 130 § 74; Rem. Supp. 1947 § 11235; prior: 1920 ex.s. c 3 § 1; 1897 c 71 § 62; 1893 c 124 § 63.]

Purpose—1988 c 274: "The legislature finds that, due to statutory and constitutional limitations, the interdependence of the regular property tax levies of the state, counties, county road districts, cities and towns, and junior taxing districts can cause significant reductions in the otherwise authorized levies of those taxing districts, resulting in serious disruptions to essential services provided by those taxing districts. The purpose of this act is to avoid unnecessary reductions in regular property tax revenue without exceeding existing statutory and constitutional tax limitations on cumulative regular property tax levy rates. The legislature declares that it is a purpose of the state, counties, county road districts, cities and towns, public hospital districts, library districts, fire protection districts, metropolitan park districts, and other taxing districts to participate in the methods provided by this act by which revenue levels supporting the services provided by all taxing districts might be maintained." [1988 c 274 § 1.]

Severability—1988 c 274: "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." [1988 c 274 § 13.]

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

Severability—1971 ex.s. c 243: See RCW 84.34.920.

Intent—1970 ex.s. c 92: "It is the intent of this 1970 amendatory act to prevent a potential doubling of property taxes that might otherwise result from the enforcement of the constitutionally required fifty percent assessment ratio as of January 1, 1970, and to adjust property tax millage rates for subsequent years to levels which will conform to the requirements of any constitutional amendment imposing a one percent limitation on property taxes. It is the further intent of this 1970 amendatory act that the statutory authority of any taxing district to impose excess levies shall not be impaired by reason of the reduction in millage rates for regular property tax levies. This 1970 amendatory act shall be construed to effectuate the legislative intent expressed in this section." [1970 ex.s. c 92 § 1.]

Effective date—Application—1970 ex.s. c 92: "This act shall take effect July 1, 1970 but shall not affect property taxes levied in 1969 or prior years." [1970 ex.s. c 92 § 11.]

84.52.043 Limitations upon regular property tax levies. Within and subject to the limitations imposed by RCW 84.52.050 as amended, the regular ad valorem tax levies upon real and personal property by the taxing districts hereafter named shall be as follows:

(1) Levies of the senior taxing districts shall be as follows: (a) The levy by the state shall not exceed three dollars and sixty cents per thousand dollars of assessed value adjusted to the state equalized value in accordance with the indicated ratio fixed by the state department of revenue to be used exclusively for the support of the common schools; (b) the levy by any county shall not

exceed one dollar and eighty cents per thousand dollars of assessed value; (c) the levy by any road district shall not exceed two dollars and twenty-five cents per thousand dollars of assessed value; and (d) the levy by any city or town shall not exceed three dollars and thirty-seven and one-half cents per thousand dollars of assessed value. However any county is hereby authorized to increase its levy from one dollar and eighty cents to a rate not to exceed two dollars and forty-seven and one-half cents per thousand dollars of assessed value for general county purposes if the total levies for both the county and any road district within the county do not exceed four dollars and five cents per thousand dollars of assessed value, and no other taxing district has its levy reduced as a result of the increased county levy.

(2) Except as provided in *RCW 84.52.100, the aggregate levies of junior taxing districts and senior taxing districts, other than the state, shall not exceed five dollars and ninety cents per thousand dollars of assessed valuation. The term "junior taxing districts" includes all taxing districts other than the state, counties, road districts, cities, towns, port districts, and public utility districts. The limitations provided in this subsection shall not apply to: (a) Levies at the rates provided by existing law by or for any port or public utility district; (b) excess property tax levies authorized in Article VII, section 2 of the state Constitution; (c) levies for acquiring conservation futures as authorized under RCW 84.34.230; and (d) levies for emergency medical care or emergency medical services imposed under RCW 84.52.069. [1990 c 234 § 1; 1989 c 378 § 36; 1988 c 274 § 5; 1973 1st ex.s. c 195 § 134.]

*Reviser's note: RCW 84.52.100 was repealed by 1990 c 234 § 5.

Purpose—Severability—1988 c 274: See notes following RCW 84.52.010.

Effective date—1973 2nd ex.s. c 4: "Sections 4 through 6 of this 1973 amendatory act shall be effective on and after January 1, 1974." [1973 2nd ex.s. c 4 § 6.] Sections 4 and 5 consist of the 1973 2nd ex.s. c 4 amendments to RCW 70.12.010 and 73.08.080, and section 6 is the section quoted.

Emergency—1973 2nd ex.s. c 4: "Except as otherwise in this 1973 amendatory act provided, this 1973 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." [1973 2nd ex.s. c 4 § 7.]

Construction—1973 1st ex.s. c 195: "Sections 135 through 152 of this 1973 amendatory act shall apply to tax levies made in 1973 for collection in 1974, and sections 1 through 134 shall apply to tax levies made in 1974 and each year thereafter for collection in 1975 and each year thereafter." [1973 1st ex.s. c 195 § 155.]

Severability—1973 1st ex.s. c 195: "If any provision of this 1973 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." [1973 1st ex.s. c 195 § 153.]

Effective dates and termination dates—1973 1st ex.s. c 195 (as amended by 1973 2nd ex.s. c 4): "This 1973 amendatory act, chapter 195, Laws of 1973, 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 section 9 shall take effect January 1, 1975, and section 133(3) shall take effect on January 31, 1974; *Provided, further*, That section 137 shall not be effective until July 1, 1973, at which time section 136 shall be void and of no effect; *Provided, further*, That section 138 shall not be effective until January 1, 1974, at which time section 137 shall be void and of no effect; *Provided, further*, That section 139 shall not be effective until July 1, 1974 at which time section 138 shall

be void and of no effect, and section 139 shall be null and void and of no further effect on and after January 1, 1975: *Provided, further*, That sections 1 through 8, sections 10 through 132, section 133(1), (2), (4), and (5), and section 134 shall not take effect until January 1, 1974, at which time sections 135, 136, and sections 140 through 151 shall be void and of no effect: *Provided, further*, That section 152 shall be void and of no effect on and after January 1, 1975." [1973 2nd ex.s. c 4 § 3; 1973 1st ex.s. c 195 § 154.]

84.52.052 Excess levies authorized—When—Procedure. The limitations imposed by RCW 84.52.050 through 84.52.056, and RCW 84.52.043 shall not prevent the levy of additional taxes by any taxing district except school districts in which a larger levy is necessary in order to prevent the impairment of the obligation of contracts. As used in this section, the term "taxing district" means any county, metropolitan park district, park and recreation service area, park and recreation district, sewer district, water district, solid waste disposal district, public facilities district, flood control zone district, county rail district, service district, public hospital district, road district, rural county library district, island library district, intercounty rural library district, fire protection district, cemetery district, city, town, transportation benefit district, emergency medical service district with a population density of less than one thousand per square mile, or cultural arts, stadium, and convention district.

Any such taxing district may levy taxes at a rate in excess of the rate specified in RCW 84.52.050 through 84.52.056 and 84.52.043, or RCW 84.55.010 through 84.55.050, when authorized so to do by the voters of such taxing district in the manner set forth in Article VII, section 2(a) of the Constitution of this state, as amended by Amendment 64 and as thereafter amended, at a special or general election to be held in the year in which the levy is made.

A special election may be called and the time therefor fixed by the county legislative authority, or council, board of commissioners, or other governing body of any such taxing district, by giving notice thereof by publication in the manner provided by law for giving notices of general elections, at which special election the proposition authorizing such excess levy shall be submitted in such form as to enable the voters favoring the proposition to vote "yes" and those opposed thereto to vote "no." [1991 c 138 § 1; 1989 c 53 § 4; 1988 ex.s. c 1 § 18. Prior: 1983 c 315 § 10; 1983 c 303 § 16; 1983 c 130 § 11; 1983 c 2 § 19; prior: 1982 1st ex.s. c 22 § 17; 1982 c 175 § 7; 1982 c 123 § 19; 1981 c 210 § 20; 1977 ex.s. c 325 § 1; 1977 c 4 § 1; 1973 1st ex.s. c 195 § 102; 1973 1st ex.s. c 195 § 147; 1973 c 3 § 1; 1971 ex.s. c 288 § 26; 1965 ex.s. c 113 § 1; 1963 c 112 § 1; 1961 c 15 § 84.52.052; prior: 1959 c 304 § 8; 1959 c 290 § 1; 1957 c 58 § 15; 1957 c 32 § 1; 1955 c 93 § 1; 1953 c 189 § 1; 1951 2nd ex.s. c 23 § 3; prior: 1951 c 255 § 1, part; 1950 ex.s. c 11 § 1, part; 1945 c 253 § 1, part; 1941 c 176 § 1, part; 1939 c 83 § 1, part; 1939 c 2 (Init. Meas. No. 129); 1937 c 1 (Init. Meas. No. 114); 1935 c 2 (Init. Meas. No. 94); 1933 c 4 (Init. Meas. No. 64); Rem. Supp. 1945 § 11238-1e, part.]

Severability—1989 c 53: See note following RCW 36.73.020.

Severability—1988 ex.s. c 1: See RCW 36.100.900.

Severability—1983 c 315: See note following RCW 90.03.500.

Severability—1983 c 303: See RCW 36.60.905.

Severability—1983 c 2: See note following RCW 18.71.030.

Severability—1982 1st ex.s. c 22: See RCW 67.38.905.

Severability—1982 c 175: See note following RCW 36.58.100.

Severability—1981 c 210: See note following RCW 36.68.400.

Severability—1977 ex.s. c 325: "If any provision of this 1977 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." [1977 ex.s. c 325 § 5.]

Effective date—1977 ex.s. c 325: "This 1977 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 July 1, 1977." [1977 ex.s. c 325 § 6.]

Severability—1977 c 4: "If any provision of this 1977 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." [1977 c 4 § 4.]

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

Savings—Severability—1971 ex.s. c 288: See notes following RCW 84.40.030.

84.52.0531 Excess levies by school districts—Maximum dollar amount for maintenance and operation support—Restrictions—Maximum levy percentage—Levy reduction funds. The maximum dollar amount which may be levied by or for any school district for maintenance and operation support under the provisions of RCW 84.52.053 shall be determined as follows:

(1) For the purpose of this section, the basic education allocation shall be determined pursuant to RCW 28A.150.250, 28A.150.260, and 28A.150.350; PROVIDED, That when determining the basic education allocation under subsection (4) of this section, nonresident full time equivalent pupils who are participating in a program provided for in chapter 28A.545 RCW or in any other program pursuant to an interdistrict agreement shall be included in the enrollment of the resident district and excluded from the enrollment of the serving district.

(2) For the purposes of subsection (5) of this section, a base year levy percentage shall be established. The base year levy percentage shall be equal to the greater of: (a) The district's actual levy percentage for calendar year 1985, (b) the average levy percentage for all school district levies in the state in calendar year 1985, or (c) the average levy percentage for all school district levies in the educational service district of the district in calendar year 1985.

(3) For excess levies for collection in calendar year 1988 and thereafter, the maximum dollar amount shall be the total of:

(a) The district's levy base as defined in subsection (4) of this section multiplied by the district's maximum levy percentage as defined in subsections (5) and (6) of this section; plus

(b) In the case of nonhigh school districts only, an amount equal to the total estimated amount due by the nonhigh school district to high school districts pursuant to chapter 28A.545 RCW for the school year during which collection of the levy is to commence, less the increase in the nonhigh school district's basic education

allocation as computed pursuant to subsection (1) of this section due to the inclusion of pupils participating in a program provided for in chapter 28A.545 RCW in such computation; less

(c) The maximum amount of state matching funds under RCW 28A.500.010 for which the district is eligible in that tax collection year.

(4) For excess levies for collection in calendar year 1988 and thereafter, a district's levy base shall be the sum of the following allocations received by the district for the prior school year, including allocations for compensation increases, adjusted by the percent increase per full time equivalent student in the state basic education appropriation between the prior school year and the current school year:

(a) The district's basic education allocation as determined pursuant to RCW 28A.150.250, 28A.150.260, and 28A.150.350;

(b) State and federal categorical allocations for the following programs:

- (i) Pupil transportation;
- (ii) Handicapped education;
- (iii) Education of highly capable students;
- (iv) Compensatory education, including but not limited to learning assistance, migrant education, Indian education, refugee programs, and bilingual education;
- (v) Food services; and
- (vi) State-wide block grant programs; and

(c) Any other federal allocations for elementary and secondary school programs, including direct grants, other than federal impact aid funds and allocations in lieu of taxes.

(5) For levies to be collected in calendar year 1988, a district's maximum levy percentage shall be determined as follows:

(a) Multiply the district's base year levy percentage as defined in subsection (2) of this section by the district's levy base as determined in subsection (4) of this section;

(b) Reduce the amount in (a) of this subsection by the total estimated amount of any levy reduction funds as defined in subsection (7) of this section which are to be allocated to the district for the 1987-88 school year;

(c) Divide the amount in (b) of this subsection by the district's levy base to compute a new percentage; and

(d) The percentage in (c) of this subsection or twenty percent, whichever is greater, shall be the district's maximum levy percentage for levies collected in calendar year 1988.

(6) For excess levies for collection in calendar year 1989 and thereafter, a district's maximum levy percentage shall be determined as follows:

(a) Multiply the district's maximum levy percentage for the prior year or thirty percent, whichever is less, by the district's levy base as determined in subsection (4) of this section;

(b) Reduce the amount in (a) of this subsection by the total estimated amount of any levy reduction funds as defined in subsection (7) of this section which are to be allocated to the district for the current school year;

(c) Divide the amount in (b) of this subsection by the district's levy base to compute a new percentage; and

(d) The percentage in (c) of this subsection or twenty percent, whichever is greater, shall be the district's maximum levy percentage for levies collected in that calendar year.

(7) "Levy reduction funds" shall mean increases in state funds from the prior school year for programs included under subsection (4) of this section: (a) That are not attributable to enrollment changes, compensation increases, or inflationary adjustments; and (b) that are or were specifically identified as levy reduction funds in the appropriations act. If levy reduction funds are dependent on formula factors which would not be finalized until after the start of the current school year, the superintendent of public instruction shall estimate the total amount of levy reduction funds by using prior school year data in place of current school year data. Levy reduction funds shall not include moneys received by school districts from cities or counties.

(8) For the purposes of this section, "prior school year" shall mean the most recent school year completed prior to the year in which the levies are to be collected.

(9) For the purposes of this section, "current school year" shall mean the year immediately following the prior school year.

(10) The superintendent of public instruction shall develop rules and regulations and inform school districts of the pertinent data necessary to carry out the provisions of this section. [1990 c 33 § 601; 1989 c 141 § 1; 1988 c 252 § 1; 1987 1st ex.s. c 2 § 101; 1987 c 185 § 40; 1985 c 374 § 1. Prior: 1981 c 264 § 10; 1981 c 168 § 1; 1979 ex.s. c 172 § 1; 1977 ex.s. c 325 § 4.]

***Reviser's note:** See 1989 1st ex.s. c 19 § 523 and 1989 1st ex.s. c 3 § 502.

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

Effective date—1989 c 141: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 141 § 2.]

Intent—1987 1st ex.s. c 2: "The legislature intends to establish the limitation on school district maintenance and operations levies at twenty percent, with ten percent to be equalized on a state-wide basis. The legislature further intends to establish a modern school financing system for compensation of school staff and provide a class size reduction in grades kindergarten through three. The legislature intends to give the highest funding priority to strengthening support for existing school programs.

The legislature finds that providing for the adoption of a state-wide salary allocation schedule for certificated instructional staff will encourage recruitment and retention of able individuals to the teaching profession, and limit the administrative burden associated with implementing state teacher salary policies." [1987 1st ex.s. c 2 § 1.]

Severability—1987 1st ex.s. c 2: "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." [1987 1st ex.s. c 2 § 213.]

Effective date—1987 1st ex.s. c 2: "This act shall take effect September 1, 1987." [1987 1st ex.s. c 2 § 214.]

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

Severability—1985 c 374: "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." [1985 c 374 § 3.]

Effective date—1981 c 264: "Section 10 of this amendatory act shall become effective for maintenance and operation excess tax levies now or hereafter authorized pursuant to RCW 84.52.053, as now or

hereafter amended, for collection in 1982 and thereafter." [1981 c 264 § 11.]

Severability—1981 c 264: See note following RCW 28A.545.030.

Effective date—1979 ex.s. c 172: "This 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 on September 1, 1979." [1979 ex.s. c 172 § 3.]

Severability—1979 ex.s. c 172: "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." [1979 ex.s. c 172 § 2.]

Severability—**Effective date**—1977 ex.s. c 325: See notes following RCW 84.52.052.

Payments to high school districts for educating nonhigh school district students: Chapter 28A.545 RCW.

Purposes: RCW 28A.545.030.

Rules to effect purposes and implement provisions: RCW 28A.545.110.

Superintendent's annual determination of estimated amount due—Process: RCW 28A.545.070.

84.52.065 State levy for support of common schools. Subject to the limitations in RCW 84.55.010, in each year the state shall levy for collection in the following year for the support of common schools of the state a tax of three dollars and sixty cents per thousand dollars of assessed value upon the assessed valuation of all taxable property within the state adjusted to the state equalized value in accordance with the indicated ratio fixed by the state department of revenue.

As used in this section, "the support of common schools" includes the payment of the principal and interest on bonds issued for capital construction projects for the common schools. [1991 1st sp.s. c 31 § 16; 1979 ex.s. c 218 § 1; 1973 1st ex.s. c 195 § 106; 1971 ex.s. c 299 § 25; 1969 ex.s. c 216 § 2; 1967 ex.s. c 133 § 1.]

Severability—1991 1st sp.s. c 31: See RCW 43.991.900.

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

Effective date—**Severability**—1971 ex.s. c 299: See notes following RCW 82.04.050.

Limitation of levies: RCW 84.52.050.

84.52.069 Six-year regular tax levies for emergency medical care and services. (1) As used in this section, "taxing district" means a county, emergency medical service district, city or town, public hospital district, or fire protection district.

(2) A taxing district may impose additional regular property tax levies in an amount equal to fifty cents or less per thousand dollars of the assessed value of property in the taxing district in each year for six consecutive years when specifically authorized so to do by a majority of at least three-fifths of the registered voters thereof approving a proposition authorizing the levies submitted at a general or special election, at which election the number of persons voting "yes" on the proposition shall constitute three-fifths of a number equal to forty per centum of the total votes cast in such taxing district at the last preceding general election when the number of registered voters voting on the proposition does not exceed forty per centum of the total votes cast in such taxing district in the last preceding general election; or

by a majority of at least three-fifths of the registered voters thereof voting on the proposition when the number of registered voters voting on the proposition exceeds forty per centum of the total votes cast in such taxing district in the last preceding general election. Ballot propositions shall conform with RCW 29.30.111.

(3) Any tax imposed under this section shall be used only for the provision of emergency medical care or emergency medical services, including related personnel costs, training for such personnel, and related equipment, supplies, vehicles and structures needed for the provision of emergency medical care or emergency medical services.

(4) If a county levies a tax under this section, no taxing district within the county may levy a tax under this section. No other taxing district may levy a tax under this section if another taxing district has levied a tax under this section within its boundaries: **PROVIDED**, That if a county levies less than fifty cents per thousand dollars of the assessed value of property, then any other taxing district may levy a tax under this section equal to the difference between the rate of the levy by the county and fifty cents: **PROVIDED FURTHER**, That if a taxing district within a county levies this tax, and the voters of the county subsequently approve a levying of this tax, then the amount of the taxing district levy within the county shall be reduced, when the combined levies exceed fifty cents. Whenever a tax is levied county-wide, the service shall, insofar as is feasible, be provided throughout the county: **PROVIDED FURTHER**, That no county-wide levy proposal may be placed on the ballot without the approval of the legislative authority of each city exceeding fifty thousand population within the county: **AND PROVIDED FURTHER**, That this section and RCW 36.32.480 shall not prohibit any city or town from levying an annual excess levy to fund emergency medical services: **AND PROVIDED, FURTHER**, That if a county proposes to impose tax levies under this section, no other ballot proposition authorizing tax levies under this section by another taxing district in the county may be placed before the voters at the same election at which the county ballot proposition is placed: **AND PROVIDED FURTHER**, That any taxing district emergency medical service levy that is authorized subsequent to a county emergency medical service levy, shall expire concurrently with the county emergency medical service levy.

(5) The tax levy authorized in this section is in addition to the tax levy authorized in RCW 84.52.043.

(6) The limitation in RCW 84.55.010 shall not apply to the first levy imposed pursuant to this section following the approval of such levy by the voters pursuant to subsection (2) of this section.

(7) No taxing district may levy under this section more than twenty-five cents per thousand dollars of assessed value of property if reductions under RCW 84.52.010(2) are made for the year within the boundaries of the taxing district. [1991 c 175 § 1; 1985 c 348 § 1; 1984 c 131 § 5; 1979 ex.s. c 200 § 1.]

Purpose—1984 c 131 §§ 3-9: See note following RCW 29.30.111.

Severability—1979 ex.s. c 200: "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." [1979 ex.s. c 200 § 3.]

84.52.100 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

84.52.110 Public hospital districts and metropolitan park districts—Levy authority. (Effective until December 31, 1996.) (1) It is the intent of this section to allow public hospital districts and metropolitan park districts to utilize levy authority approved by the voters pursuant to *RCW 84.52.100 for the duration of such voter approval. It is further the intent of this section that these levies be made between the statutory tax rate limits established by RCW 84.52.043 and the applicable constitutional limits.

(2) Any increase of cumulative limitation approved by the voters of a public hospital district or metropolitan park district pursuant to *RCW 84.52.100 prior to the effective date of the repeal of that provision shall remain valid and such district may levy such amount as the appropriate levy capacity may allow for the time authorized by the voters: PROVIDED, That no other levy, including fire district, library district, conservation futures under RCW 84.34.230, and emergency medical care or services under RCW 84.52.069 shall be reduced as a result of the increased public hospital district or metropolitan park district levy. [1990 c 283 § 5.]

*Reviser's note: RCW 84.52.100 was repealed by 1990 c 234 § 5, effective March 28, 1990.

Expiration date—1990 c 283: "Section 5 of this act expires December 31, 1996." [1990 c 283 § 9.]

Chapter 84.55

LIMITATIONS UPON REGULAR PROPERTY TAXES

Sections

84.55.050 Election to authorize increase in regular property tax levy—Limited propositions—Procedure.

84.55.050 Election to authorize increase in regular property tax levy—Limited propositions—Procedure.

Limited application—1991 1st sp.s. c 17: "Tax levies authorized by voter approval of a ballot proposition submitted by a city under RCW 84.55.050 at an election held prior to 1988 for the purpose of funding the cost of library improvements, plus the costs of borrowing such amount for up to twenty years, may be levied in the amounts and in the years authorized by the voters in addition to the levies otherwise allowed by this chapter until the expiration of the limited period or satisfaction of the limited purpose so authorized, whichever comes first, notwithstanding the provisions of RCW 84.55.050(2). This section is curative and shall apply retroactively to all limited ballot propositions described herein. The elections at which any such ballot propositions were submitted, and the tax levies authorized thereby, shall be valid and effective in all respects. This section shall not be construed to adversely affect the validity or reduce the amount of any tax levies authorized by any other ballot proposition heretofore or hereafter submitted under RCW 84.55.050." [1991 1st sp.s. c 17 § 1.]

Chapter 84.56 COLLECTION OF TAXES

Sections

84.56.020 Taxes collected by treasurer—Dates of delinquency—Tax statement notice concerning payment by check—Interest—Penalties.

84.56.050 Treasurer's duties on receiving rolls—Notice of taxes due.

84.56.060 Tax receipts—Current tax only may be paid.

84.56.070 Personal property—Distraint and sale, notice, property incapable of manual delivery, property about to be removed or disposed of.

84.56.120 Removal of property from county or state after assessment without paying tax.

84.56.220 Lien of personalty tax follows insurance.

84.56.230 Monthly distribution of taxes collected.

84.56.260 Continuing responsibility to collect taxes, special assessments, fees, rates, or other charges.

84.56.280 Settlement with state for state taxes—Penalty.

84.56.290 Adjustment with state for reduced or canceled taxes and for taxes on assessments not on the certified assessment list.

84.56.020 Taxes collected by treasurer—Dates of delinquency—Tax statement notice concerning payment by check—Interest—Penalties. (1) The county treasurer shall be the receiver and collector of all taxes extended upon the tax rolls of the county, whether levied for state, county, school, bridge, road, municipal or other purposes, and also of all fines, forfeitures or penalties received by any person or officer for the use of his or her county. All taxes upon real and personal property made payable by the provisions of this title shall be due and payable to the treasurer on or before the thirtieth day of April and shall be delinquent after that date: PROVIDED, That each tax statement shall include a notice that checks for payment of taxes may be made payable to "Treasurer of _____ County" or other appropriate office, but tax statements shall not include any suggestion that checks may be made payable to the name of the individual holding the office of treasurer nor any other individual: PROVIDED FURTHER, That when the total amount of tax or special assessments on personal property or on any lot, block or tract of real property payable by one person is thirty dollars or more, and if one-half of such tax be paid on or before the thirtieth day of April, the remainder of such tax shall be due and payable on or before the thirty-first day of October following and shall be delinquent after that date: PROVIDED FURTHER, That when the total amount of tax or special assessments on any lot, block or tract of real property payable by one person is thirty dollars or more, and if one-half of such tax be paid after the thirtieth day of April but before the thirty-first day of October, together with the applicable interest and penalty on the full amount of such tax, the remainder of such tax shall be due and payable on or before the thirty-first day of October following and shall be delinquent after that date.

(2) Delinquent taxes under this section are subject to interest at the rate of twelve percent per annum computed on a monthly basis from the date of delinquency until paid. Interest shall be calculated at the rate in effect at the time of payment of the tax, regardless of

when the taxes were first delinquent. In addition, delinquent taxes under this section are subject to penalties as follows:

(a) A penalty of three percent shall be assessed on the amount of tax delinquent on June 1st of the year in which the tax is due.

(b) An additional penalty of eight percent shall be assessed on the total amount of tax delinquent on December 1st of the year in which the tax is due.

(3) Subsection (2) of this section notwithstanding, no interest or penalties may be assessed for the period April 30, 1991, through December 31, 1991, on delinquent 1991 taxes which are imposed on personal residences owned by military personnel who participated in the situation known as "Operation Desert Shield," "Operation Desert Storm," or any following operation from August 2, 1990, to a date specified by an agency of the federal government as the end of such operations.

(4) For purposes of this chapter, "interest" means both interest and penalties.

(5) All collections of interest on delinquent taxes shall be credited to the county current expense fund; but the cost of foreclosure and sale of real property, and the fees and costs of distraint and sale of personal property, for delinquent taxes, shall, when collected, be credited to the operation and maintenance fund of the county treasurer prosecuting the foreclosure or distraint or sale; and shall be used by the county treasurer as a revolving fund to defray the cost of further foreclosure, distraint and sale for delinquent taxes without regard to budget limitations. [1991 c 245 § 16; 1991 c 52 § 1; 1988 c 222 § 30; 1987 c 211 § 1; 1984 c 131 § 1; 1981 c 322 § 2; 1974 ex.s. c 196 § 1; 1974 ex.s. c 116 § 1; 1971 ex.s. c 288 § 3; 1969 ex.s. c 216 § 3; 1961 c 15 § 84.56.020. Prior: 1949 c 21 § 1; 1935 c 30 § 2; 1931 c 113 § 1; 1925 ex.s. c 130 § 83; Rem. Supp. 1949 § 11244; prior: 1917 c 141 § 1; 1899 c 141 § 6; 1897 c 71 § 68; 1895 c 176 § 14; 1893 c 124 § 69; 1890 p 561 § 84; Code 1881 § 2892. Formerly RCW 84.56.020 and 84.56.030.]

Reviser's note: This section was amended by 1991 c 52 § 1 and by 1991 c 245 § 16, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1988 c 222: See note following RCW 84.40.040.

Effective date—1987 c 211: "This act shall take effect January 1, 1988." [1987 c 211 § 2.]

Applicability—1984 c 131 § 1: "Section 1 of this act applies to taxes payable in 1985 and thereafter." [1984 c 131 § 12.] "Section 1 of this act" consists of the 1984 c 131 amendment to RCW 84.56.020.

Severability—1974 ex.s. c 196: "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 196 § 9.]

Savings—Severability—1971 ex.s. c 288: See notes following RCW 84.40.030.

Advance deposit of taxes on certain platted property: RCW 58.08.040.

Payment of taxes upon loss of exempt status: RCW 84.40.380.

84.56.050 Treasurer's duties on receiving rolls—
Notice of taxes due. On receiving the tax rolls the treasurer shall post all real and personal property taxes from

the rolls to the treasurer's tax roll, and shall carry forward to the current tax rolls a memorandum of all delinquent taxes on each and every description of property, and enter the same on the property upon which the taxes are delinquent showing the amounts for each year. The treasurer shall notify each taxpayer in the county, at the expense of the county, of the amount of the real and personal property, and the current and delinquent amount of tax due on the same; and the treasurer shall have printed on the notice the name of each tax and the levy made on the same. The county treasurer shall be the sole collector of all delinquent taxes and all other taxes due and collectible on the tax rolls of the county: **PROVIDED,** That the term "taxpayer" as used in this section shall mean any person charged, or whose property is charged, with property tax; and the person to be notified is that person whose name appears on the tax roll herein mentioned: **PROVIDED, FURTHER,** That if no name so appears the person to be notified is that person shown by the treasurer's tax rolls or duplicate tax receipts of any preceding year as the payer of the tax last paid on the property in question. [1991 c 245 § 17; 1963 c 94 § 1; 1961 c 15 § 84.56.050. Prior: 1941 c 32 § 1; 1939 c 206 § 41; 1937 c 121 § 2; 1925 ex.s. c 130 § 84; Rem. Supp. 1941 § 1,1245; prior: 1897 c 71 § 69; 1893 c 124 § 70; 1890 p 561 § 85; Code 1881 §§ 2894, 2895.]

84.56.060 Tax receipts—Current tax only may be paid. The county treasurer upon receiving any tax paid in cash, shall give to the person paying the same a receipt. The treasurer shall record the payment of all taxes in the treasurer's records by parcel. The owner or owners of property against which there are delinquent taxes, shall have the right to pay the current tax without paying any delinquent taxes there may be against the property. [1991 c 245 § 18; 1971 ex.s. c 35 § 1; 1961 c 15 § 84.56.060. Prior: 1925 ex.s. c 130 § 85; RRS § 11246; prior: 1897 c 71 § 70; 1893 c 124 § 71; 1890 p 561 § 86; Code 1881 § 2899.]

84.56.070 Personal property—Distraint and sale, notice, property incapable of manual delivery, property about to be removed or disposed of. On the fifteenth day of February succeeding the levy of taxes, the county treasurer shall proceed to collect all personal property taxes. The treasurer shall give notice by mail to all persons charged with personal property taxes, and if such taxes are not paid before they become delinquent, the treasurer shall forthwith proceed to collect the same. In the event that he or she is unable to collect the same when due, the treasurer shall prepare papers in distraint, which shall contain a description of the personal property, the amount of taxes, the amount of the accrued interest at the rate provided by law from the date of delinquency, and the name of the owner or reputed owner. The treasurer shall without demand or notice distraint sufficient goods and chattels belonging to the person charged with such taxes to pay the same, with interest at the rate provided by law from the date of delinquency, together with all accruing costs, and shall

proceed to advertise the same by posting written notices in three public places in the county in which such property has been distrained, one of which places shall be at the county court house, such notice to state the time when and place where such property will be sold. The county treasurer, or the treasurer's deputy, shall tax the same fees for making the distraint and sale of goods and chattels for the payment of taxes as are allowed by law to sheriffs for making levy and sale of property on execution; traveling fees to be computed from the county seat of the county to the place of making distraint. If the taxes for which such property is distrained, and the interest and costs accruing thereon, are not paid before the date appointed for such sale, which shall be not less than ten days after the taking of such property, such treasurer or treasurer's designee shall proceed to sell such property at public auction, or so much thereof as shall be sufficient to pay such taxes, with interest and costs, and if there be any excess of money arising from the sale of any personal property, the treasurer shall pay such excess less any cost of the auction to the owner of the property so sold or to his or her legal representative: PROVIDED, That whenever it shall become necessary to distraint any standing timber owned separately from the ownership of the land upon which the same may stand, or any fish trap, pound net, reef net, set net or drag seine fishing location, or any other personal property as the treasurer shall determine to be incapable or reasonably impracticable of manual delivery, it shall be deemed to have been distrained and taken into possession when the treasurer shall have, at least thirty days before the date fixed for the sale thereof, filed with the auditor of the county wherein such property is located a notice in writing reciting that the treasurer has distrained such property, describing it, giving the name of the owner or reputed owner, the amount of the tax due, with interest, and the time and place of sale; a copy of the notice shall also be sent to the owner or reputed owner at his last known address, by registered letter at least thirty days prior to the date of sale: AND PROVIDED FURTHER, That if the county treasurer has reasonable grounds to believe that any personal property upon which taxes have been levied, but not paid, is about to be removed from the county where the same has been assessed, or is about to be destroyed, sold or disposed of, the county treasurer may demand such taxes, without the notice provided for in this section, and if necessary may forthwith distraint sufficient goods and chattels to pay the same. [1991 c 245 § 19; 1975-'76 2nd ex.s. c 10 § 2; 1961 c 15 § 84.56.070. Prior: 1949 c 21 § 2; 1935 c 30 § 4; 1933 c 33 § 1; 1925 ex.s. c 130 § 86; Rem. Supp. 1949 § 11247; prior: 1915 c 137 § 1; 1911 c 24 § 2; 1899 c 141 § 7; 1897 c 71 § 71; 1895 c 176 § 15; 1893 c 124 § 72; 1890 p 561 § 87; Code 1881 § 2903. Formerly RCW 84.56.070, 84.56.080 and 84.56.100.]

84.56.120 Removal of property from county or state after assessment without paying tax. After personal property has been assessed, it shall be unlawful for any person to remove the same from the county in which the property was assessed and from the state until taxes and

interest are paid, or until notice has been given to the county treasurer describing the property to be removed and in case of public sales of personal property, a list of the property desired to be sold shall be sent to the treasurer, and no property shall be sold at such sale until the tax has been paid, the tax to be computed upon the consolidated tax levy for the previous year. Any person violating the provisions of this section shall be guilty of a misdemeanor. [1991 c 245 § 20; 1961 c 15 § 84.56.120. Prior: 1925 ex.s. c 130 § 88; RRS § 11249; prior: 1907 c 29 § 2.]

84.56.220 Lien of personalty tax follows insurance. In the event of the destruction of personal property, the lien of the personal property tax shall attach to and follow any insurance that may be upon the property and the insurer shall pay to the county treasurer from the insurance money all taxes, interest and costs that may be due. [1991 c 245 § 21; 1961 c 15 § 84.56.220. Prior: 1935 c 30 § 5; 1925 ex.s. c 130 § 87; RRS § 11248; prior: 1921 c 117 § 1; 1911 c 24 § 3.]

84.56.230 Monthly distribution of taxes collected. On the first day of each month the county treasurer shall distribute pro rata, according to the rate of levy for each fund, the amount collected as consolidated tax during the preceding month: PROVIDED, HOWEVER, That the county treasurer, at his or her option, may distribute the total amount of such taxes collected according to the ratio that the levy of taxes made for each taxing district in the county bears to such total amount collected. On or before the tenth day of each month the county treasurer shall remit to the respective city treasurers the cities' pro rata share of all taxes collected for the previous month as provided for in RCW 36.29.110. [1991 c 245 § 22; 1973 1st ex.s. c 43 § 1; 1961 c 15 § 84.56.230. Prior: 1925 ex.s. c 130 § 93; RRS § 11254; prior: 1890 p 564 § 95.]

84.56.260 Continuing responsibility to collect taxes, special assessments, fees, rates, or other charges. The power and duty to levy on property and collect any tax due and unpaid shall be the responsibility of the county treasurer until the tax is paid; and the certification of the assessment roll shall continue in force and confer authority upon the treasurer to whom the same was issued to collect any tax due and uncollected thereon. This section shall apply to all assessment rolls, special assessments, fees, rates, or other charges for which the treasurer has the responsibility for collection. [1991 c 245 § 23; 1984 c 250 § 7; 1961 c 15 § 84.56.260. Prior: 1925 ex.s. c 130 § 96; RRS § 11257; prior: 1897 c 71 § 74; 1893 c 124 § 75.]

84.56.280 Settlement with state for state taxes—Penalty. Immediately after the last day of each month, the county treasurer shall pay over to the state treasurer the amount collected by the county treasurer and credited to the various state funds, but every such payment shall be subject to correction for error discovered. If they are not paid to the state treasurer before the twentieth

day of the month the state treasurer shall make a sight draft on the county treasurer for such amount. Should any county treasurer fail or refuse to honor the draft or make payment of the amount thereon, except for manifest error or other good and sufficient cause, the county treasurer shall be guilty of nonfeasance in office and upon conviction thereof shall be punished according to law. [1991 c 245 § 24; 1979 ex.s. c 86 § 7; 1961 c 15 § 84.56.280. Prior: 1955 c 113 § 2; prior: 1949 c 69 § 1, part; 1933 c 35 § 1, part; 1925 ex.s. c 130 § 97, part; Rem. Supp. 1949 § 11258, part; prior: 1899 c 141 § 9, part; 1897 c 71 § 76, part; 1895 c 176 § 17, part; 1893 c 124 § 77, part; 1890 p 565 § 96, part; Code 1881 § 2942, part.]

Severability—1979 ex.s. c 86: See note following RCW 13.24.040.

84.56.290 Adjustment with state for reduced or canceled taxes and for taxes on assessments not on the certified assessment list. Whenever any tax shall have been heretofore, or shall be hereafter, canceled, reduced or modified in any final judicial, county board of equalization, state board of tax appeals, or administrative proceeding; or whenever any tax shall have been heretofore, or shall be hereafter canceled by sale of property to any irrigation district under foreclosure proceedings for delinquent irrigation district assessments; or whenever any contracts or leases on public lands shall have been heretofore, or shall be hereafter, canceled and the tax thereon remains unpaid for a period of two years, the director of revenue shall, upon receipt from the county treasurer of a certified copy of the final judgment, order, or decree canceling, reducing, or modifying taxes, or of a certificate from the county treasurer of the cancellation by sale to an irrigation district, or of a certificate from the commissioner of public lands and the county treasurer of the cancellation of public land contracts or leases and nonpayment of taxes thereon, as the case may be, make corresponding entries and corrections on the director's records of the state's portion of reduced or canceled tax.

Upon canceling taxes deemed uncollectible, the county commissioners shall notify the county treasurer of such action, whereupon the county treasurer shall deduct on the treasurer's records the amount of such uncollectible taxes due the various state funds and shall immediately notify the department of revenue of the treasurer's action and of the reason therefor; which uncollectible tax shall not then nor thereafter be due or owing the various state funds and the necessary corrections shall be made by the county treasurer upon the quarterly settlement next following.

When any assessment of property is made which does not appear on the assessment list certified by the county board of equalization to the department of revenue the county assessor shall indicate to the county treasurer the assessments and the taxes due therefrom when the list is delivered to the county treasurer on December 15th. The county treasurer shall then notify the department of revenue of the taxes due the state from the assessments which did not appear on the assessment list certified by the county board of equalization to the department of

revenue. The county treasurer shall make proper accounting of all sums collected as either advance tax, compensating or additional tax, or supplemental or omitted tax and shall notify the department of revenue of the amounts due the various state funds according to the levy used in extending such tax, and those amounts shall immediately become due and owing to the various state funds, to be paid to the state treasurer in the same manner as taxes extended on the regular tax roll. [1991 c 245 § 37; 1987 c 168 § 3; 1979 ex.s. c 86 § 8; 1961 c 15 § 84.56.290. Prior: 1955 c 113 § 3; prior: 1949 c 69 § 1, part; 1933 c 35 § 1, part; 1925 ex.s. c 130 § 97, part; Rem. Supp. 1949 § 11258, part; prior: 1899 c 141 § 9, part; 1897 c 71 § 76, part; 1895 c 176 § 17, part; 1893 c 124 § 77, part; 1890 p 565 § 96, part; Code 1881 § 2942, part.]

Severability—1979 ex.s. c 86: See note following RCW 13.24.040.

Chapter 84.64

CERTIFICATES OF DELINQUENCY

Sections	
84.64.010	through 84.64.030 Repealed.
84.64.050	Certificate to county—Foreclosure—Notice—Sale of certain residential property eligible for deferral prohibited.
84.64.070	Redemption before day of sale—Redemption of property of minors and legally incompetent persons.
84.64.080	Foreclosure proceedings—Judgment—Sale—Notice—Form of deed—Recording.
84.64.120	Appellate review—Deposit.
84.64.140	through 84.64.170 Repealed.
84.64.210	Repealed.
84.64.215	Deed recording fee—Transmittal to county auditor and purchaser.
84.64.240	Repealed.
84.64.270	Sales of tax-title property—Reservations—Notices—Installment contracts—Separate sale of reserved resources.

84.64.010 through 84.64.030 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

84.64.050 Certificate to county—Foreclosure—Notice—Sale of certain residential property eligible for deferral prohibited. After the expiration of three years from the date of delinquency, when any property remains on the tax rolls for which no certificate of delinquency has been issued, the county treasurer shall proceed to issue certificates of delinquency on the property to the county for all years' taxes, interest, and costs: PROVIDED, That the county treasurer, with the consent of the county legislative authority, may elect to issue a certificate for fewer than all years' taxes, interest, and costs to a minimum of the taxes, interest, and costs for the earliest year.

Certificates of delinquency shall be prima facie evidence that:

- (1) The property described was subject to taxation at the time the same was assessed;
- (2) The property was assessed as required by law;

(3) The taxes or assessments were not paid at any time before the issuance of the certificate;

(4) Such certificate shall have the same force and effect as a *lis pendens* required under chapter 4.28 RCW.

The county treasurer may include in the certificate of delinquency any assessments which are due on the property and are the responsibility of the county treasurer to collect. For purposes of this chapter, "taxes, interest, and costs" include any assessments which are so included by the county treasurer.

The treasurer shall file the certificates when completed with the clerk of the court at no cost to the treasurer, and the treasurer shall thereupon, with legal assistance from the county prosecuting attorney, proceed to foreclose in the name of the county, the tax liens embraced in such certificates. Notice and summons must be served or notice given in a manner reasonably calculated to inform the owner or owners, and any person having a recorded interest in or lien of record upon the property, of the foreclosure action to appear within thirty days after service of such notice and defend such action or pay the amount due. Either (a) personal service upon the owner or owners and any person having a recorded interest in or lien of record upon the property, or (b) publication once in a newspaper of general circulation, which is circulated in the area of the property and mailing of notice by certified mail to the owner or owners and any person having a recorded interest in or lien of record upon the property, or, if a mailing address is unavailable, personal service upon the occupant of the property, if any, is sufficient. If such notice is returned as unclaimed, the treasurer shall send notice by regular first class mail. The notice shall include the legal description on the tax rolls, the year or years for which assessed, the amount of tax and interest due, and the name of owner, or reputed owner, if known, and the notice must include the local street address, if any, for informational purposes only. The certificates of delinquency issued to the county may be issued in one general certificate in book form including all property, and the proceedings to foreclose the liens against the property may be brought in one action and all persons interested in any of the property involved in the proceedings may be made codefendants in the action, and if unknown may be therein named as unknown owners, and the publication of such notice shall be sufficient service thereof on all persons interested in the property described therein, except as provided above. The person or persons whose name or names appear on the treasurer's rolls as the owner or owners of the property shall be considered and treated as the owner or owners of the property for the purpose of this section, and if upon the treasurer's rolls it appears that the owner or owners of the property are unknown, then the property shall be proceeded against, as belonging to an unknown owner or owners, as the case may be, and all persons owning or claiming to own, or having or claiming to have an interest therein, are hereby required to take notice of the proceedings and of any and all steps thereunder: PROVIDED, That prior to the sale of the property, the treasurer shall order or

conduct a title search of the property to be sold to determine the legal description of the property to be sold and the record title holder, and if the record title holder or holders differ from the person or persons whose name or names appear on the treasurer's rolls as the owner or owners, the record title holder or holders shall be considered and treated as the owner or owners of the property for the purpose of this section, and shall be entitled to the notice provided for in this section. Such title search shall be included in the costs of foreclosure.

The county treasurer shall not sell property which is eligible for deferral of taxes under chapter 84.38 RCW but shall require the owner of the property to file a declaration to defer taxes under chapter 84.38 RCW. [1991 c 245 § 25; 1989 c 378 § 37; 1986 c 278 § 64. Prior: 1984 c 220 § 19; 1984 c 179 § 2; 1981 c 322 § 4; 1972 ex.s. c 84 § 2; 1961 c 15 § 84.64.050; prior: 1937 c 17 § 1; 1925 ex.s. c 130 § 117; RRS § 11278; prior: 1917 c 113 § 1; 1901 c 178 § 3; 1899 c 141 § 15; 1897 c 71 § 98.]

Severability—1986 c 278: See note following RCW 36.01.010.
Notice of foreclosure to be given to city treasurer: RCW 35.49.130.

84.64.070 Redemption before day of sale—Redemption of property of minors and legally incompetent persons. Real property upon which certificates of delinquency have been issued under the provisions of this chapter, may be redeemed at any time before the close of business the day before the day of the sale, by payment, as prescribed by the county treasurer, to the county treasurer of the proper county, of the amount for which the certificate of delinquency was issued, together with interest at the statutory rate per annum charged on delinquent general real and personal property taxes from date of issuance of the certificate of delinquency until paid. The person redeeming such property shall also pay the amount of all taxes, interest and costs accruing after the issuance of such certificate of delinquency, together with interest at the statutory rate per annum charged on delinquent general real and personal property taxes on such payment from the day the same was made. No fee shall be charged for any redemption. Tenants in common or joint tenants shall be allowed to redeem their individual interest in real property for which certificates of delinquency have been issued under the provisions of this chapter, in the manner and under the terms specified in this section for the redemption of real property other than that of persons adjudicated to be legally incompetent or minors. If the real property of any minor, or any person adjudicated to be legally incompetent, be sold for nonpayment of taxes, the same may be redeemed at any time within three years after the date of sale upon the terms specified in this section, on the payment of interest at the statutory rate per annum charged on delinquent general real and personal property taxes on the amount for which the same was sold, from and after the date of sale, and in addition the redemptioner shall pay the reasonable value of all improvements made in good faith on the property, less the value of the use thereof, which redemption may be made by themselves or by any person in their behalf. [1991 c 245 § 26; 1963 c 88 § 2; 1961 c

15 § 84.64.070. Prior: 1925 ex.s. c 130 § 119; RRS § 11280; prior: 1917 c 142 § 4; 1899 c 141 § 17; 1897 c 71 § 102; 1895 c 176 § 25; 1893 c 124 § 121.]

84.64.080 Foreclosure proceedings—Judgment—Sale—Notice—Form of deed—Recording. The court shall examine each application for judgment foreclosing tax lien, and if defense (specifying in writing the particular cause of objection) be offered by any person interested in any of the lands or lots to the entry of judgment against the same, the court shall hear and determine the matter in a summary manner, without other pleadings, and shall pronounce judgment as the right of the case may be; or the court may, in its discretion, continue such individual cases, wherein defense is offered, to such time as may be necessary, in order to secure substantial justice to the contestants therein; but in all other cases the court shall proceed to determine the matter in a summary manner as above specified. In all judicial proceedings of any kind for the collection of taxes, and interest and costs thereon, all amendments which by law can be made in any personal action pending in such court shall be allowed, and no assessments of property or charge for any of the taxes shall be considered illegal on account of any irregularity in the tax list or assessment rolls or on account of the assessment rolls or tax list not having been made, completed or returned within the time required by law, or on account of the property having been charged or listed in the assessment or tax lists without name, or in any other name than that of the owner, and no error or informality in the proceedings of any of the officers connected with the assessment, levying or collection of the taxes, shall vitiate or in any manner affect the tax or the assessment thereof, and any irregularities or informality in the assessment rolls or tax lists or in any of the proceedings connected with the assessment or levy of such taxes or any omission or defective act of any officer or officers connected with the assessment or levying of such taxes, may be, in the discretion of the court, corrected, supplied and made to conform to the law by the court. The court shall give judgment for such taxes, interest and costs as shall appear to be due upon the several lots or tracts described in the notice of application for judgment or complaint, and such judgment shall be a several judgment against each tract or lot or part of a tract or lot for each kind of tax included therein, including all interest and costs, and the court shall order and direct the clerk to make and enter an order for the sale of such real property against which judgment is made, or vacate and set aside the certificate of delinquency or make such other order or judgment as in the law or equity may be just. The order shall be signed by the judge of the superior court, shall be delivered to the county treasurer, and shall be full and sufficient authority for him or her to proceed to sell the property for the sum as set forth in the order and to take such further steps in the matter as are provided by law. The county treasurer shall immediately after receiving the order and judgment of the court proceed to sell the property as provided in this chapter to the highest and best bidder for cash. The acceptable

minimum bid shall be the total amount of taxes, interest, penalties, and costs. All sales shall be made at a location in the county on a date and time (except Saturdays, Sundays, or legal holidays) as the county treasurer may direct, and shall continue from day to day (Saturdays, Sundays, and legal holidays excepted) during the same hours until all lots or tracts are sold, after first giving notice of the time, and place where such sale is to take place for ten days successively by posting notice thereof in three public places in the county, one of which shall be in the office of the treasurer. The notice shall be substantially in the following form:

TAX JUDGMENT SALE

Public notice is hereby given that pursuant to real property tax judgment of the superior court of the county of _____ in the state of Washington, and an order of sale duly issued by the court, entered the _____ day of _____, _____, in proceedings for foreclosure of tax liens upon real property, as per provisions of law, I shall on the _____ day of _____, _____, at _____ o'clock a.m., at _____ in the city of _____, and county of _____, state of Washington, sell the real property to the highest and best bidder for cash, to satisfy the full amount of taxes, interest and costs adjudged to be due.

In witness whereof, I have hereunto affixed my hand and seal this _____ day of _____, _____.

Treasurer of _____
county.

No county officer or employee shall directly or indirectly be a purchaser of such property at such sale.

If any buildings or improvements are upon an area encompassing more than one tract or lot, the same must be advertised and sold as a single unit.

If the highest amount bid for any such separate unit tract or lot is in excess of the minimum bid due upon the whole property included in the certificate of delinquency, the excess shall be refunded following payment of all water and sewer district liens, on application therefor, to the record owner of the property. The record owner of the property is the person who held title on the date of issuance of the certificate of delinquency. In the event no claim for the excess is received by the county treasurer within three years after the date of the sale he or she shall at expiration of the three year period deposit such excess in the current expense fund of the county. The county treasurer shall execute to the purchaser of any piece or parcel of land a tax deed. The deed so made by the county treasurer, under the official seal of his or her office, shall be recorded in the same manner as other conveyances of real property, and shall vest in the grantee, his or her heirs and assigns the title to the property therein described, without further acknowledgment or evidence of such conveyance, and shall be substantially in the following form:

State of Washington }
County of _____ } ss.

This indenture, made this ----- day of -----, -----, between -----, as treasurer of ----- county, state of Washington, party of the first part, and -----, party of the second part:

Witnesseth, that, whereas, at a public sale of real property held on the ----- day of -----, -----, pursuant to a real property tax judgment entered in the superior court in the county of ----- on the ----- day of -----, -----, in proceedings to foreclose tax liens upon real property and an order of sale duly issued by the court, ----- duly purchased in compliance with the laws of the state of Washington, the following described real property, to wit: (Here place description of real property conveyed) and that the ----- has complied with the laws of the state of Washington necessary to entitle (him, or her or them) to a deed for the real property.

Now, therefore, know ye, that, I -----, county treasurer of the county of -----, state of Washington, in consideration of the premises and by virtue of the statutes of the state of Washington, in such cases provided, do hereby grant and convey unto -----, his or her heirs and assigns, forever, the real property hereinbefore described.

Given under my hand and seal of office this ----- day of -----, A.D. -----

County Treasurer.

[1991 c 245 § 27; 1981 c 322 § 5; 1965 ex.s. c 23 § 4; 1963 c 8 § 1; 1961 c 15 § 84.64.080. Prior: 1951 c 220 § 1; 1939 c 206 § 47; 1937 c 118 § 1; 1925 ex.s. c 130 § 20; RRS § 11281; prior: 1909 c 163 § 1; 1903 c 59 § 5; 1899 c 141 § 18; 1897 c 71 § 103; 1893 c 124 § 105; 1890 p 573 § 112; Code 1881 § 2917. Formerly RCW 84.64.080, 84.64.090, 84.64.100, and 84.64.110.]

Validation—1963 c 8: "All rights acquired or any liability or obligation incurred under the provisions of this section prior to February 18, 1963, or any process, proceeding, order, or judgment involving the assessment of any property or the levy or collection of any tax thereunder, or any certificate of delinquency, tax deed or other instrument given or executed thereunder, or any claim or refund thereunder, or any sale or other proceeding thereunder are hereby declared valid and of full force and effect." [1963 c 8 § 2.]

84.64.120 Appellate review—**Deposit.** Appellate review of the judgment of the superior court may be sought as in other civil cases. However, review must be sought within thirty days after the entry of the judgment and the party taking such appeal shall deposit a sum equal to all taxes, interest, penalties, and costs with the clerk of the court, conditioned that the appellant shall prosecute the appeal with effect, and will pay the amount of any taxes, interest and costs which may be finally adjudged against the real property involved in the appeal by any court having jurisdiction of the cause. No appeal shall be allowed from any judgment for the sale of land or lot for taxes unless the party taking such appeal shall before the time of giving notice of such appeal, and within thirty days herein allowed within which to appeal, deposit with the clerk of the court of the county in which the land or lots are situated, an amount of money equal to the amount of the judgment and costs

rendered in such cause by the trial court. If, in case of an appeal, the judgment of the lower court shall be affirmed, in whole or in part, the supreme court or the court of appeals shall enter judgment for the amount of taxes, interest and costs, with damages not to exceed twenty percent, and shall order that the amount deposited with the clerk of the court, or so much thereof as may be necessary, be credited upon the judgment so rendered, and execution shall issue for the balance of the judgment, damages and costs. The clerk of the supreme court or the clerk of the division of the court of appeals in which the appeal is pending shall transmit to the county treasurer of the county in which the land or lots are situated a certified copy of the order of affirmance, and it shall be the duty of such county treasurer upon receiving the same to apply so much of the amount deposited with the clerk of the court, as shall be necessary to satisfy the amount of the judgment of the supreme court, and to account for the same as collected taxes. If the judgment of the superior court shall be reversed and the cause remanded for a rehearing, and if, upon a rehearing, judgment shall be rendered for the sale of the land or lots for taxes, or any part thereof, and such judgment be not appealed from, as herein provided, the clerk of such superior court shall certify to the county treasurer the amount of such judgment, and thereupon it shall be the duty of the county treasurer to certify to the county clerk the amount deposited with the clerk of the court, and the county clerk shall credit such judgment with the amount of such deposit, or so much thereof as will satisfy the judgment, and the county treasurer shall be chargeable and accountable for the amount so credited as collected taxes. Nothing herein shall be construed as requiring an additional deposit in case of more than one appeal being prosecuted in [the] proceeding. If, upon a final hearing, judgment shall be refused for the sale of the land or lots for the taxes, penalties, interest and costs, or any part thereof, in the proceedings, the county treasurer shall pay over to the party who shall have made such deposit, or his or her legally authorized agent or representative, the amount of the deposit, or so much thereof as shall remain after the satisfaction of the judgment against the land or lots in respect to which such deposit shall have been made. [1991 c 245 § 28; 1988 c 202 § 70; 1971 c 81 § 154; 1961 c 15 § 84.64-.120. Prior: 1925 ex.s. c 130 § 121; RRS § 11282; prior: 1903 c 59 § 4; 1897 c 71 § 104; 1893 c 124 § 106.]

Rules of court: Cf. RAP 5.2, 8.1, 18.22.

Severability—1988 c 202: See note following RCW 2.24.050.

84.64.140 through 84.64.170 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

84.64.210 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

84.64.215 Deed recording fee—**Transmittal to county auditor and purchaser.** In addition to a five-dollar fee for preparing the deed, the treasurer shall collect the

proper recording fee. This recording fee together with the deed shall then be transmitted by the treasurer to the county auditor who will record the same and mail the deed to the purchaser. [1991 c 245 § 29; 1961 c 15 § 84.64.215. Prior: 1947 c 60 § 1; Rem. Supp. 1947 § 11295a. Formerly RCW 84.64.210, part.]

84.64.240 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

84.64.270 Sales of tax-title property—Reservations—Notices—Installment contracts—Separate sale of reserved resources. Real property heretofore or hereafter acquired by any county of this state by foreclosure of delinquent taxes may be sold by order of the county legislative authority of the county when in the judgment of the members of the legislative authority they deem it for the best interests of the county to sell the same. When the legislative authority desires to sell any such property it may, if deemed advantageous to the county, combine any or all of the several lots and tracts of such property in one or more units, and may reserve from sale coal, oil, gas, gravel, minerals, ores, fossils, timber, or other resources on or in the lands, and the right to mine for and remove the same, and it shall then enter an order on its records fixing the unit or units in which the property shall be sold and the minimum price for each of such units, and whether the sale will be for cash or whether a contract will be offered, and reserving from sale such of the resources as it may determine and from which units such reservations shall apply, and directing the county treasurer to sell such property in the unit or units and at not less than the price or prices and subject to such reservations so fixed by the county legislative authority: PROVIDED, That the order shall be subject to the approval of the county treasurer if several lots or tracts of land are combined in one unit. It shall be the duty of the county treasurer upon receipt of such order to publish once a week for three consecutive weeks a notice of the sale of such property in a newspaper of general circulation in the county where the land is situated. The notice shall describe the property to be sold, the unit or units, the reservations, and the minimum price fixed in the order, together with the time and place and terms of sale, in the same manner as foreclosure sales as provided by RCW 84.64.080. The person making the bid shall state whether he or she will pay cash for the amount of his or her bid or accept a real estate contract of purchase in accordance with the provisions hereinafter contained. The person making the highest bid shall become the purchaser of the property. If the highest bidder is a contract bidder the purchaser shall be required to pay thirty percent of the total purchase price at the time of the sale and shall enter into a contract with the county as vendor and the purchaser as vendee which shall obligate and require the purchaser to pay the balance of the purchase price in ten equal annual installments commencing November 1st and each year following the date of the sale, and shall require the purchaser to pay twelve percent interest on all deferred

payments, interest to be paid at the time the annual installment is due; and may contain a provision authorizing the purchaser to make payment in full at any time of any balance due on the total purchase price plus accrued interest on such balance. The contract shall contain a provision requiring the purchaser to pay before delinquency all subsequent taxes and assessments that may be levied or assessed against the property subsequent to the date of the contract, and shall contain a provision that time is of the essence of the contract and that in event of a failure of the vendee to make payments at the time and in the manner required and to keep and perform the covenants and conditions therein required of him or her that the contract may be forfeited and terminated at the election of the vendor, and that in event of the election all sums theretofore paid by the vendee shall be forfeited as liquidated damages for failure to comply with the provisions of the contract; and shall require the vendor to execute and deliver to the vendee a deed of conveyance covering the property upon the payment in full of the purchase price, plus accrued interest: PROVIDED FURTHER, That the county legislative authority may, by order entered in its records, direct the coal, oil, gas, gravel, minerals, ores, timber, or other resources sold apart from the land, such sale to be conducted in the manner hereinabove prescribed for the sale of the land: PROVIDED FURTHER, That any such reserved minerals or resources not exceeding two hundred dollars in value may be sold, when the county legislative authority deems it advisable, either with or without such publication of the notice of sale, and in such manner as the county legislative authority may determine will be most beneficial to the county. [1991 c 245 § 30; 1981 c 322 § 7; 1965 ex.s. c 23 § 5; 1961 c 15 § 84.64.270. Prior: 1945 c 172 § 1; 1937 c 68 § 1; 1927 c 263 § 1; 1925 ex.s. c 130 § 133; Rem. Supp. 1945 § 11294; prior: 1903 c 59 § 1; 1899 c 141 § 29; 1890 p 579 § 124; Code 1881 § 2934. Formerly RCW 84.64.270, 84.64.280, and 84.64.290.]

City may acquire property from county before resale: RCW 35.49.150.

Disposition of proceeds upon resale

generally: RCW 35.49.160.

of property subject to diking, drainage or sewerage improvement district assessments: RCW 85.08.500.

Exchange, lease, management of county tax title lands: Chapter 36.35 RCW.

Tax title land

conveyance of to port districts: RCW 53.25.050.

may be deeded to department of natural resources for reforestation purposes: RCW 76.12.020.

may be leased for mineral, gas and petroleum development: Chapter 78.16 RCW.

Chapter 84.69

REFUNDS

Sections

- | | |
|-----------|--|
| 84.69.020 | Grounds for refunds. |
| 84.69.030 | Procedure to obtain order for refund. |
| 84.69.040 | Refunds may include amounts paid to state, and county and taxing district taxes. |
| 84.69.060 | Refunds with respect to county, state, and taxing district taxes. |

- 84.69.070 Refunds with respect to taxing districts—Administrative expenses—Disposition of funds upon expiration of refund orders.
- 84.69.110 Expiration date of refund orders.
- 84.69.120 Action on rejected claim—Time for commencement.

84.69.020 Grounds for refunds. On the order of the county treasurer, ad valorem taxes paid before or after delinquency shall be refunded if they were:

- (1) Paid more than once; or
- (2) Paid as a result of manifest error in description; or
- (3) Paid as a result of a clerical error in extending the tax rolls; or
- (4) Paid as a result of other clerical errors in listing property; or
- (5) Paid with respect to improvements which did not exist on assessment date; or
- (6) Paid under levies or statutes adjudicated to be illegal or unconstitutional; or
- (7) Paid as a result of mistake, inadvertence, or lack of knowledge by any person exempted from paying real property taxes or a portion thereof pursuant to RCW 84.36.381 through 84.36.389, as now or hereafter amended; or
- (8) Paid or overpaid as a result of mistake, inadvertence, or lack of knowledge by either a public official or employee or by any person paying the same or paid as a result of mistake, inadvertence, or lack of knowledge by either a public official or employee or by any person paying the same with respect to real property in which the person paying the same has no legal interest; or
- (9) Paid on the basis of an assessed valuation which was appealed to the county board of equalization and ordered reduced by the board; or
- (10) Paid on the basis of an assessed valuation which was appealed to the state board of tax appeals and ordered reduced by the board: PROVIDED, That the amount refunded under subsections (9) and (10) of this section shall only be for the difference between the tax paid on the basis of the appealed valuation and the tax payable on the valuation adjusted in accordance with the board's order; or
- (11) Paid as a state property tax levied upon property, the assessed value of which has been established by the state board of tax appeals for the year of such levy: PROVIDED, HOWEVER, That the amount refunded shall only be for the difference between the state property tax paid and the amount of state property tax which would, when added to all other property taxes within the one percent limitation of Article VII, section 2 (Amendment 59) of the state Constitution equal one percent of the assessed value established by the board;
- (12) Paid on the basis of an assessed valuation which was adjudicated to be unlawful or excessive: PROVIDED, That the amount refunded shall be for the difference between the amount of tax which was paid on the basis of the valuation adjudged unlawful or excessive and the amount of tax payable on the basis of the assessed valuation determined as a result of the proceeding; or
- (13) Paid on property acquired under RCW 84.60.050, and canceled under RCW 84.60.050(2).

No refunds under the provisions of this section shall be made because of any error in determining the valuation of property, except as authorized in subsections (9), (10), (11), and (12) of this section nor may any refunds be made if a bona fide purchaser has acquired rights that would preclude the assessment and collection of the refunded tax from the property that should properly have been charged with the tax. Any refunds made on delinquent taxes shall include the proportionate amount of interest and penalties paid.

The county treasurer of each county shall make all refunds determined to be authorized by this section, and by the first Monday in January of each year, report to the county legislative authority a list of all refunds made under this section during the previous year. The list is to include the name of the person receiving the refund, the amount of the refund, and the reason for the refund. [1991 c 245 § 31; 1989 c 378 § 17; 1981 c 228 § 1; 1975 1st ex.s. c 291 § 21; 1974 ex.s. c 122 § 2; 1972 ex.s. c 126 § 2; 1971 ex.s. c 288 § 14; 1969 ex.s. c 224 § 1; 1961 c 15 § 84.69.020. Prior: 1957 c 120 § 2.]

Applicability—1981 c 228: "Section 1(12) of the [this] amendatory act applies to only those taxes which first become due and payable subsequent to January 1, 1981: *Provided, however,* That this section shall not apply to any taxes which were paid under protest and which were timely paid." [1981 c 228 § 4.] This applies to RCW 84.69.020(12).

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

Purpose—1974 ex.s. c 122: "The legislature recognizes that the operation of the provisions of RCW 84.52.065 and 84.48.080, providing for adjustments in the county-determined assessed value of property for purposes of the state property tax for schools, may, with respect to certain properties, result in a total regular property tax payment in excess of the one percent limitation provided for in Article 7, section 2 (Amendment 59) of the state Constitution. The primary purpose of this 1974 amendatory act is to provide a procedure for administrative relief in such cases, such relief to be in addition to the presently existing procedure for judicial relief through a refund action provided for in RCW 84.68.020." [1974 ex.s. c 122 § 1.]

Severability—Savings—1971 ex.s. c 288: See notes following RCW 84.40.030.

84.69.030 Procedure to obtain order for refund. Except in cases wherein the county legislative authority acts upon its own motion, no orders for a refund under this chapter shall be made except on a claim:

- (1) Verified by the person who paid the tax, the person's guardian, executor or administrator; and
- (2) Filed with the county treasurer within three years after making of the payment sought to be refunded; and
- (3) Stating the statutory ground upon which the refund is claimed. [1991 c 245 § 32; 1989 c 378 § 32; 1961 c 15 § 84.69.030. Prior: 1957 c 120 § 3.]

84.69.040 Refunds may include amounts paid to state, and county and taxing district taxes. Refunds ordered by the county legislative authority may include:

- (1) A portion of amounts paid to the state treasurer by the county treasurer as money belonging to the state; and also
- (2) County taxes and taxes collected by county officers for taxing districts. [1991 c 245 § 33; 1961 c 15 § 84.69.040. Prior: 1957 c 120 § 4.]

84.69.060 Refunds with respect to county, state, and taxing district taxes. Refunds ordered under this chapter with respect to county, state, and taxing district taxes shall be paid by checks drawn upon the appropriate fund by the county treasurer: PROVIDED, That in making refunds on a levy code or tax code bases, the county treasurer may make an adjustment on the subsequent year's property tax payment due for the amount of the refund. [1991 c 245 § 34; 1989 c 378 § 18; 1988 c 222 § 32; 1973 2nd ex.s. c 5 § 2; 1961 c 15 § 84.69.060. Prior: 1957 c 120 § 6.]

84.69.070 Refunds with respect to taxing districts—Administrative expenses—Disposition of funds upon expiration of refund orders. Refunds ordered with respect to taxing districts shall be paid by checks drawn by the county treasurer upon such available funds, if any, as the taxing districts may have on deposit in the county treasury, or in the event such funds are insufficient, then out of funds subsequently accruing to such taxing district and on deposit in the county treasury. When such refunds are made as a result of taxes paid under levies or statutes adjudicated to be illegal or unconstitutional all administrative costs including interest paid on the refunds incurred by the county treasurer in making such refunds shall be a charge against the funds of such districts and/or the state on a pro rata basis until the county current expense fund is fully reimbursed for the administrative expenses incurred in making such refund: PROVIDED, That whenever orders for refunds of ad valorem taxes promulgated by the county treasurer or county legislative authority and unpaid checks shall expire and become void as provided in RCW 84.69.110, then any moneys remaining in a refund account established by the county treasurer for any taxing district may be transferred by the county treasurer from such refund account to the county current expense fund to reimburse the county for the administrative expense incurred in making refunds as prescribed herein. Any excess then remaining in the taxing district refund account may then be transferred by the county treasurer to the current expense fund of the taxing district for which the tax was originally levied and collected. [1991 c 245 § 38; 1973 2nd ex.s. c 5 § 3; 1963 c 114 § 1; 1961 c 270 § 2; 1961 c 15 § 84.69.070. Prior: 1957 c 120 § 7.]

84.69.110 Expiration date of refund orders. Every order for refund of ad valorem taxes promulgated by the county treasurer or county legislative authority under authority of this chapter as hereafter amended shall expire and be void three years from the date of the order and all unpaid checks shall become void. [1991 c 245 § 39; 1961 c 15 § 84.69.110. Prior: 1957 c 120 § 11.]

84.69.120 Action on rejected claim—Time for commencement. If the county treasurer rejects a claim or fails to act within six months from the date of filing of a claim for refund in whole or in part, the person who paid the taxes, the person's guardian, executor, or administrator may within one year after the date of the filing of the claim commence an action in the superior court

against the county to recover the taxes which the county treasurer has refused to refund. [1991 c 245 § 40; 1989 c 378 § 33; 1981 c 228 § 2; 1961 c 15 § 84.69.120. Prior: 1957 c 120 § 12.]

Title 85

DIKING AND DRAINAGE

Chapters

- 85.05 Diking districts.**
- 85.06 Drainage districts and miscellaneous drainage provisions.**
- 85.08 Diking, drainage, and sewerage improvement districts.**
- 85.24 Diking and drainage districts in two or more counties.**
- 85.38 Special district creation and operation.**

Chapter 85.05

DIKING DISTRICTS

Sections

- 85.05.015 Recodified as RCW 85.08.025.
- 85.05.280 Organization of board—Warrants, how issued.
- 85.05.360 Warrants—When and how paid.
- 85.05.410 Compensation of commissioners.

85.05.015 Recodified as RCW 85.08.025. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

85.05.280 Organization of board—Warrants, how issued. The board of commissioners of such district shall elect one of their number chair and shall either elect one of their number, or appoint a voter of the district, as secretary, who shall keep minutes of all the district's proceedings. The board of commissioners may issue warrants of such district in payment of all claims of indebtedness against such district. Such warrants shall be in form and substance the same as county warrants and shall draw the legal rate of interest from the date of their presentation to the treasurer for payment, as hereinafter provided, and shall be signed by the chair and attested by the secretary of the board: PROVIDED, That no warrants shall be issued by the board of commissioners in payment of any indebtedness of such district for less than the face or par value. [1991 c 245 § 35; 1985 c 396 § 38; 1895 c 117 § 28; RRS § 4277. Formerly RCW 85.04.040, part and RCW 85.04.165, part.]

Severability—1985 c 396: See RCW 85.38.900.

85.05.360 Warrants—When and how paid. All warrants issued under the provisions of this chapter shall be presented by the owners thereof to the county treasurer in accordance with chapter 36.29 RCW. [1991 c 245 § 36; 1986 c 278 § 29; 1895 c 117 § 36; RRS § 4286. Formerly RCW 85.04.170, part.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.05.410 Compensation of commissioners. Members of the board of diking commissioners of any diking district in this state may receive as compensation the sum of up to fifty dollars for attendance at official meetings of the district and for each day or major part thereof for all necessary services actually performed in connection with their duties as commissioners, and shall receive the same compensation as other labor of a like character for all other necessary work or services performed in connection with their duties: PROVIDED, That such compensation shall not exceed four thousand eight hundred dollars in one calendar year, except when the commissioners declare an emergency. Allowance of such compensation shall be established and approved at regular meetings of the board, and when a copy of the extracts of minutes of the board meeting relative thereto showing such approval is certified by the secretary of such board and filed with the county auditor, the allowance made shall be paid as are other claims against the district.

Each commissioner is entitled to reimbursement for reasonable expenses actually incurred in connection with such business, including subsistence and lodging, while away from the commissioner's place of residence, and mileage for use of a privately owned vehicle in accordance with chapter 42.24 RCW. [1991 c 349 § 20; 1985 c 396 § 39; 1974 ex.s. c 39 § 1; 1951 c 30 § 1; 1909 c 171 § 1; 1895 c 117 § 41; RRS § 4291. Formerly RCW 85.04.400.]

Severability—1985 c 396: See RCW 85.38.900.

Chapter 85.06

DRAINAGE DISTRICTS AND MISCELLANEOUS DRAINAGE PROVISIONS

Sections

PART I—DRAINAGE DISTRICTS

85.06.380 Compensation and expenses of commissioners.

85.06.380 Compensation and expenses of commissioners. In performing their duties under the provisions of this title the board and members of the board of drainage commissioners may receive as compensation up to fifty dollars for attendance at official meetings of the district and for each day or major part thereof for all necessary services actually performed in connection with their duties as commissioners: PROVIDED, That such compensation shall not exceed four thousand eight hundred dollars in one calendar year: PROVIDED FURTHER, That such services and compensation are allowed and approved at a regular meeting of the board. Upon the submission of a copy, certified by the secretary, of the extracts of the relevant minutes of the board showing such approval, to the county auditor, the same shall be paid as other claims against the district are paid. Each commissioner is entitled to reimbursement for reasonable expenses actually incurred in connection with such business, including subsistence and lodging, while away from the commissioner's place of residence

and mileage for use of a privately-owned vehicle in accordance with chapter 42.24 RCW. [1991 c 349 § 21; 1985 c 396 § 43; 1980 c 23 § 2; 1959 c 209 § 1; 1947 c 76 § 1; 1907 c 62 § 1; 1895 c 115 § 38; RRS § 4338. Formerly RCW 85.04.600.]

Severability—1985 c 396: See RCW 85.38.900.

Chapter 85.08

DIKING, DRAINAGE, AND SEWERAGE IMPROVEMENT DISTRICTS

Sections

85.08.025 Voting rights.
85.08.320 Costs paid by voucher, payroll, or warrant—Temporary warrants—Priority—Compensation of officers and employees.

85.08.025 Voting rights. Each qualified voter of a diking improvement or drainage improvement district who owns more than ten acres of land within the district shall be entitled to two additional votes for each ten acres or major fraction thereof located within the district, up to a maximum total of forty votes for any voter, or in the case of community property, a maximum total of twenty votes per member of the marital community: PROVIDED, That this additional voting provision shall only apply in districts that were not in operation and did not have improvements as of May 14, 1925. [1991 c 349 § 3; 1985 c 396 § 21. Formerly RCW 85.05.015.]

Severability—1985 c 396: See RCW 85.38.900.

85.08.320 Costs paid by voucher, payroll, or warrant—Temporary warrants—Priority—Compensation of officers and employees. The compensation of the superintendent of construction, the board of appraisers hereinafter provided for, and any special engineer, attorney or agent employed by the district in connection with the improvement, the maximum wages to be paid, and the maximum price of materials to be used, shall be fixed by the district board of supervisors. Members of the board of supervisors may receive compensation up to fifty dollars for attending each official meeting of the district and for each day or major part thereof for all necessary services actually performed in connection with their duties as supervisors: PROVIDED, That such compensation shall not exceed four thousand eight hundred dollars in one calendar year. Each supervisor shall be entitled to reimbursement for reasonable expenses actually incurred in connection with business, including subsistence and lodging while away from the supervisor's place of residence and mileage for use of a privately owned vehicle in accordance with chapter 42.24 RCW. All costs of construction or maintenance done under the direction of the board of supervisors shall be paid upon vouchers or payrolls verified by two of the said supervisors. All costs of construction and all other expenses, fees and charges on account of such improvement shall be paid by warrants drawn by the county auditor upon the county treasurer upon the proper fund, and shall

draw interest at a rate determined by the county legislative authority until paid or called by the county treasurer as warrants of the county are called. [1991 c 349 § 22; 1986 c 278 § 32; 1985 c 396 § 46; 1981 c 156 § 23; 1917 c 130 § 28; 1913 c 176 § 23; RRS § 4428. Formerly RCW 85.08.320 and 85.08.330.]

Severability—1986 c 278: See note following RCW 36.01.010.

Severability—1985 c 396: See RCW 85.38.900.

Chapter 85.24

DIKING AND DRAINAGE DISTRICTS IN TWO OR MORE COUNTIES

Sections

85.24.080	Board of commissioners—Compensation and expenses—Secretary's salary—Affidavit of amounts.
85.24.210	Repealed.
85.24.250	Municipality may contribute.

85.24.080 Board of commissioners—Compensation and expenses—Secretary's salary—Affidavit of amounts. The members of the board may receive as compensation up to fifty dollars for attendance at official meetings of the district and for each day or major part thereof for all necessary services actually performed in connection with their duties as commissioners: PROVIDED, That such compensation shall not exceed four thousand eight hundred dollars in one calendar year: PROVIDED FURTHER, That the board may fix a different salary for the secretary thereof in lieu of the per diem. Each commissioner is entitled to reimbursement for reasonable expenses actually incurred in connection with such business, including subsistence and lodging, while away from the commissioner's place of residence, and mileage for use of a privately owned vehicle in accordance with chapter 42.24 RCW. The salary and expenses shall be paid by the treasurer of the fund, upon orders made by the board. Each member of the board must before being paid for expenses, take vouchers therefore from the person or persons to whom the particular amount was paid, and must also make affidavit that the amounts were necessarily incurred and expended in the performance of his or her duties. [1991 c 349 § 23; 1985 c 396 § 54; 1909 c 225 § 33; RRS § 4393.]

Severability—1985 c 396: See RCW 85.38.900.

85.24.210 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

85.24.250 Municipality may contribute. Whenever it appears to the council of any incorporated city or town not included or not wholly included within the limits of any diking or drainage district established hereunder, which incorporated city or town may be within a county in which a portion of such district is located that the construction and maintenance of such diking and drainage system will be beneficial to the health and general welfare of the inhabitants of the incorporated city or

town, then the city or town council may appropriate money out of the general funds of the city or town to such diking and drainage system, or the council may for such purpose impose assessments upon all the property in the city or town that benefits from facilities and activities of the diking or drainage district, and give the assessments to the diking or drainage district. [1991 c 349 § 7; 1973 1st ex.s. c 195 § 119; 1909 c 225 § 19; RRS § 4379.]

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

Limitation of levies: RCW 84.52.050.

Chapter 85.38

SPECIAL DISTRICT CREATION AND OPERATION

Sections

85.38.010	Definitions.
85.38.040	Proposed special districts—Public hearing—Notice.
85.38.050	Public hearing—Elections.
85.38.060	Elections—Notice—Costs.
85.38.070	Governing board—Terms of office—Election—Appointment—Vacancies—Qualifications.
85.38.090	Governing body—Reduction in size.
85.38.100	General elections.
85.38.105	Voting rights.
85.38.110	Presumed eligible voters' list—Notice of requirements of voting authority—Copy of voter's list to county auditor.
85.38.115	Elections—When not required.
85.38.120	Elections—Auditor's assistance—Notice—Auditor's costs.
85.38.125	Elections—Auditor to conduct—Election by mail.
85.38.130	Election officials—Duties—Voting hours—Challenged ballots—Absentee ballots.
85.38.180	Special districts—Powers.
85.38.217	Drainage and drainage improvement districts—Removal of area by first class city—Notice.
85.38.225	Alternative dissolution procedure—Drainage and drainage improvement districts—Conditions.

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

(1) "Governing body" means the board of commissioners, board of supervisors, or board of directors of a special district.

(2) "Owner of land" means the record owner of at least a majority ownership interest in a separate and legally created lot or parcel of land, as determined by the records of the county auditor, except that if the lot or parcel has been sold under a real estate contract, the vendee or grantee shall be deemed to be the owner of such land for purposes of authorizing voting rights. It is assumed, unless shown otherwise, that the name appearing as the owner of property on the property tax rolls is the current owner.

(3) "Qualified voter of a special district" means a person who is either: (a) A natural person who is a voter under general state election laws, registered to vote in the state of Washington for a period of not less than thirty days before the election, and the owner of land located in the special district for a period of not less than thirty days before the election; (b) a corporation or partnership that has owned land located in the special

district for a period of not less than sixty days before the election; or (c) the state, its agencies or political subdivisions that own land in the special district or lands proposed to be annexed into the special district except that the state, its agencies and political subdivisions shall not be eligible to vote to elect a member of the governing board of a special district.

(4) "Special district" means: (a) A diking district; (b) a drainage district; (c) a diking, drainage, and/or sewerage improvement district; (d) an intercounty diking and drainage district; (e) a consolidated diking district, drainage district, diking improvement district, and/or drainage improvement district; or (f) a flood control district.

(5) "Special district general election" means the election of a special district regularly held on the first Tuesday after the first Monday in February in each even-numbered year at which a member of the special district governing body is regularly elected. [1991 c 349 § 1; 1986 c 278 § 41; 1985 c 396 § 2.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.38.040 Proposed special districts—Public hearing—Notice. The county legislative authority shall schedule a public hearing on the proposed special district if the county engineer's report indicates that the proposed projects are feasible. If the engineers of each of the counties within which a proposed special district is located indicate that the proposed projects are feasible, the county legislative authorities shall schedule a joint public hearing on the proposed special district. The county legislative authority may, on its own initiative, schedule a public hearing on the proposed special district if the county engineer's report indicates that the proposed projects are not feasible. The county legislative authorities of counties within which a proposed special district is located may, on their own initiative, schedule a joint public hearing on the proposed special district if one or more of the county engineers' reports indicate that the proposed projects are not feasible.

Notice of the public hearing shall be published in a newspaper of general circulation within the proposed special district, which notice shall be purchased in the manner of a general advertisement, not to be included with legal advertisements or with classified advertisements. This notice shall be published at least twice, not more than twenty nor less than three days before public hearing. Additional notice shall be made as required in RCW 79.44.040.

The notice must contain the following: (1) The date, time, and place of the public hearing; (2) a statement that a particular special district is proposed to be created; (3) a general description of the proposed projects to be completed by the special district; (4) a general description of the proposed special district boundaries; and (5) a statement that all affected persons may appear and present their comments in favor of or against the creation of the proposed special district. [1991 c 349 § 8; 1985 c 396 § 5.]

85.38.050 Public hearing—Elections. The county legislative authority or authorities shall conduct the public hearing at the date, time, and place indicated in the notice. Public hearings may be continued to other dates, times, and places specified by the county legislative authority or authorities before the adjournment of the public hearing. Each county legislative authority may alter those portions of boundaries of the proposed special district that are located within the county, but if territory is added that was not described in the original proposed boundaries, an additional hearing on the proposal shall be held with notice being published as provided in RCW 85.38.040.

After receiving the public testimony, the county legislative authority may cause an election to be held to authorize the creation of a special district if it finds:

(1) That creation of the special district will be conducive to the public health, convenience and welfare;

(2) That the creation of the special district will be of special benefit to a majority of the lands included within the special district; and

(3) That the proposed improvements are feasible and economical, and that the benefits of these improvements exceed costs for the improvements.

If the proposed special district is located within two or more counties, the county legislative authorities may cause an election to be held to authorize the creation of the special district upon making the findings set forth in subsections (1) through (3) of this section.

The county legislative authority or authorities may also choose not to allow such an election to be held by either failing to act or finding that one or more of these factors are not met. [1991 c 349 § 9; 1985 c 396 § 6.]

85.38.060 Elections—Notice—Costs. The county legislative authority or authorities shall cause an election on the question of creating the special district to be held if findings as provided in RCW 85.38.050 are made. The county legislative authority or authorities shall designate a time and date for such election, which shall be one of the special election dates provided for in RCW 29.13.020, together with the site or sites at which votes may be cast. The persons allowed to vote on the creation of a special district shall be those persons who, if the special district were created, would be qualified voters of the special district as described in RCW 85.38.010. The county auditor or auditors of the counties within which the proposed special district is located shall conduct the election and prepare a list of presumed eligible voters.

Notices for the election shall be published as provided in RCW 85.38.040. The special district shall be created if the proposition to create the special district is approved by a simple majority vote of the voters voting on the proposition and the special district may assume operations whenever the initial members of the governing body are appointed as provided in RCW 85.38.070.

Any special district created after July 28, 1985, may only have special assessments measured and imposed, and budgets adopted, as provided in RCW 85.38.140 through 85.38.170.

If the special district is created, the county or counties may charge the special district for the costs incurred by the county engineer or engineers pursuant to RCW 85.38.030 and the costs of the auditor or auditors related to the election to authorize the creation of the special district pursuant to this section. Such county actions shall be deemed to be special benefits of the property located within the special district that are paid through the imposition of special assessments. [1991 c 349 § 10; 1985 c 396 § 7.]

85.38.070 Governing board—Terms of office—Election—Appointment—Vacancies—Qualifications. (1) Except as provided in RCW 85.38.090, each special district shall be governed by a three-member governing body. The term of office for each member of a special district governing body shall be six years and until his or her successor is elected and qualified. One member of the governing body shall be elected at the time of special district general elections in each even-numbered year for a term of six years beginning as soon as the election returns have been certified for assumption of office by elected officials of cities.

(2) The terms of office of members of the governing bodies of special districts, who are holding office on July 28, 1985, shall be altered to provide staggered six-year terms as provided in this subsection. The member who on July 28, 1985, has the longest term remaining shall have his or her term altered so that the position will be filled at the February 1992, special district general election; the member with the second longest term remaining shall have his or her term altered so that the position will be filled at the December, 1989, special district general election; and the member with the third longest term of office shall have his or her term altered so that the position will be filled at the December, 1987, special district general election.

(3) The initial members of the governing body of a newly created special district shall be appointed by the legislative authority of the county within which the special district, or the largest portion of the special district, is located. These initial governing body members shall serve until their successors are elected and qualified at the next special district general election held at least ninety days after the special district is established. At that election the first elected members of the governing body shall be elected. No primary elections may be held. Any voter of a special district may become a candidate for such a position by filing written notice of this intention with the county auditor at least thirty, but not more than sixty, days before a special district general election. The county auditor in consultation with the special district shall establish the filing period. The names of all candidates for such positions shall be listed alphabetically. At this first election, the candidate receiving the greatest number of votes shall have a six-year term, the candidate receiving the second greatest number of votes shall have a four-year term, and the candidate receiving the third greatest number of votes shall have a two-year term of office. The initially elected members of a governing body shall take office immediately when qualified

as defined in RCW 29.01.135. Thereafter the candidate receiving the greatest number of votes shall be elected for a six-year term of office. Members of a governing body shall hold their office until their successors are elected and qualified, and assume office as soon as the election returns have been certified.

(4) The requirements for the filing period and method for filing declarations of candidacy for the governing body of the district and the arrangement of candidate names on the ballot for all special district elections conducted after the initial election in the district shall be the same as the requirements for the initial election in the district. No primary elections may be held for the governing body of a special district.

(5) Whenever a vacancy occurs in the governing body of a special district, the legislative authority of the county within which the special district, or the largest portion of the special district, is located, shall appoint a district voter to serve until a person is elected, at the next special district general election occurring sixty or more days after the vacancy has occurred, to serve the remainder of the unexpired term. The person so elected shall take office immediately when qualified as defined in RCW 29.01.135.

If an election for the position which became vacant would otherwise have been held at this special district election, only one election shall be held and the person elected to fill the succeeding term for that position shall take office immediately when qualified as defined in RCW 29.01.135 and shall serve both the remainder of the unexpired term and the succeeding term. A vacancy occurs upon the death, resignation, or incapacity of a governing body member or whenever the governing body member ceases being a qualified voter of the special district.

(6) An elected or appointed member of a special district governing body, or a candidate for a special district governing body, must be a qualified voter of the special district: PROVIDED, That the state, its agencies and political subdivisions, or their designees under RCW 85.38.010(3) shall not be eligible for election or appointment. [1991 c 349 § 11; 1987 c 298 § 2; 1986 c 278 § 42; 1985 c 396 § 8.]

Severability—1986 c 278: See note following RCW 36.01.010.

85.38.090 Governing body—Reduction in size. (1) Whenever the governing body of a special district has more than three members, the governing body shall be reduced to three members as of January 1, 1986, by eliminating the positions of those district governing body members with the shortest remaining terms of office. The remaining three governing body members shall have staggered terms with the one having the shortest remaining term having his or her position filled at the 1987 special district general election, the one with the next shortest remaining term having his or her position filled at the 1989 special district general election, and the one with the longest remaining term having his or her position filled at the 1992 special district general election. If any of these remaining three governing body members have identical remaining terms of office, the

newly calculated remaining terms of these persons shall be determined by lot with the county auditor who assists the special district in its elections managing such lot procedure. The newly established terms shall be recorded by the county auditor.

(2) However, whenever five or more special districts have consolidated under chapter 85.36 RCW and the consolidated district has five members in its governing body on July 28, 1985, the consolidated district may adopt a resolution retaining a five-member governing body. At any time thereafter, such a district may adopt a resolution and reduce the size of the governing body to three members with the reduction occurring as provided in subsection (1) of this section, but the years of the effective dates shall be extended so that the reduction occurs at the next January 1st occurring after the date of the adoption of the resolution. Whenever a special district is so governed by a five-member governing body, two members shall be elected at each of two consecutive special district general elections, and one member shall be elected at the following special district general election, each to serve a six-year staggered term. [1991 c 349 § 12; 1985 c 396 § 10.]

85.38.100 General elections. General elections shall be held in each special district on the first Tuesday after the first Monday in February in each even-numbered year. The auditor of the county within which a special district, or the largest portion of a special district, is located may provide for special elections whenever necessary. [1991 c 349 § 5; 1985 c 396 § 11.]

85.38.105 Voting rights. (1) The owner of land located in a special district who is a qualified voter of the special district shall receive two votes at any election.

(2) If multiple undivided interests, other than community property interests, exist in a lot or parcel and no person owns a majority undivided interest, the owners of undivided interests at least equal to a majority interest may designate in writing:

(a) Which owner is eligible to vote and may cast two votes; or

(b) Which two owners are eligible to vote and may cast one vote each.

(3) If land is owned as community property, each spouse is entitled to one vote if both spouses otherwise qualify to vote, unless one spouse designates in writing that the other spouse may cast both votes.

(4) A corporation, partnership, or governmental entity shall designate:

(a) A natural person to cast its two votes; or

(b) Two natural persons to each cast one of its votes.

(5) Except as provided in RCW 85.08.025 and 86.09-.377, no owner of land may cast more than two votes or have more than two votes cast for him or her in a special district election. [1991 c 349 § 2.]

85.38.110 Presumed eligible voters' list—Notice of requirements of voting authority—Copy of voter's list to county auditor. A list of presumed eligible voters shall be prepared and maintained by each special district. The

list shall include the assessor's tax number for each lot or parcel in the district, the name or the names of the owners of such lots and parcels and their mailing address, the extent of the ownership interest of such persons, and if such persons are natural persons, whether they are known to be registered voters in the state of Washington. Whenever such a list is prepared, the district shall attempt to notify each owner of the requirements necessary to establish voting authority to vote. Whenever lots or parcels in the district are sold, the district shall attempt to notify the purchasers of the requirements necessary to establish voting authority. Each special district shall provide a copy of this list, and any revised list, to the auditor of the county within which all or the largest portion of the special district is located. The special district must compile the list of eligible voters and provide it to the county auditor by the first day of November preceding the special district general election. In the event the special district does not provide the county auditor with the list of qualified voters by this date, the county auditor shall compile the list and charge the special district for the costs required for its preparation. The county auditor shall not be held responsible for any errors in the list. [1991 c 349 § 13; 1985 c 396 § 12.]

85.38.115 Elections—When not required. No election shall be held to elect a member of a special district governing body, or to fill the remainder of an unexpired term which arose from a vacancy on the governing body, if no one or only one person files for the position.

If only one person files for the position, he or she shall be considered to have been elected to the position at the election that otherwise would have taken place for such position.

If no one files for the position and the upcoming election is one at which someone would have been elected to fill the expired term, the position shall be treated as vacant at the expiration of the term.

If no one files for the position and the upcoming election is one at which someone would have been elected to fill the remaining term of office, the person appointed to fill the vacancy shall be considered to have been elected to the position at the election and shall serve for the remainder of the unexpired term. [1991 c 349 § 6.]

85.38.120 Elections—Auditor's assistance—Notice—Auditor's costs. The auditor of the county within which a special district, or the largest portion of a special district, is located shall assist such special district with its elections as provided in this section.

(1) The county auditor shall publish notice of an election to create a special district and notice of all special district elections not conducted by mail in a newspaper of general circulation in the special district at least once not more than ten nor less than three days before the election. The notices shall describe the election, give its date and times to be held, and indicate the election site or sites in the special district where ballots may be cast.

(2) If a special district has at least five hundred qualified voters, then the county auditor shall publish in a newspaper of general circulation in the special district a notice of the filing period and place for filing a declaration of candidacy to become a member of the governing body. This notice shall be published at least seven days prior to the closing of the filing period. If the special district has less than five hundred qualified voters, then the special district shall mail or deliver this notice to each qualified voter of the special district at least seven days prior to the closing of the filing period.

(3) All costs of the county auditor incurred related to such elections shall be reimbursed by the special district. [1991 c 349 § 14; 1985 c 396 § 13.]

85.38.125 Elections—Auditor to conduct—Election by mail. (1) If a special district has less than five hundred qualified voters, then the special district must contract with the county auditor to conduct the special district elections. The county auditor has the discretion as to whether to conduct the election by mail.

(2) If a special district has at least five hundred qualified voters, the special district may contract with the county auditor to staff the voting site during the election or contract with the county auditor to conduct the election by mail. A special district with at least five hundred qualified voters may also choose to conduct its own elections. A special district that conducts its own elections must enter into an agreement with the county auditor that specifies the responsibilities of both parties.

(3) If the county auditor conducts a special district election by mail, then the provisions of chapter 29.36 RCW which govern elections by mail, except for the requirements of RCW 29.36.120, shall apply. [1991 c 349 § 15.]

85.38.130 Election officials—Duties—Voting hours—Challenged ballots—Absentee ballots. For special district elections that are not conducted by mail, the governing body of each special district shall appoint three voters of the special district, who may be members of the governing body, to act as election officials, unless the special district contracts with the county auditor to staff the election site. The election officials shall distribute a ballot or ballots to each voter of the special district who arrives at the voting place during the hours for the election on the day of the election and requests a ballot. Ballots shall also be provided to those persons arriving at the polling place during the hours for the election on the day of the election who present documents or evidence sufficient to establish their eligibility to vote. A person arriving at the polling place at such times who demands a ballot, but who fails to present documents or evidence which in the opinion of the election officials is sufficient to establish eligibility to vote, shall be given a ballot clearly marked as "challenged" and shall be allowed to vote. Each challenged ballot shall be numbered consecutively and a list of such persons and their ballot numbers shall be made.

The governing body of each special district shall designate those hours from 7 a.m. to 8 p.m. during which

the election shall be held: PROVIDED, That at least six consecutive hours must be designated. When the election is over, the election officials shall secure the ballots and transport the ballots to the county auditor's office by noon of the day following the election. The auditor may, at his or her discretion, station a deputy auditor or auditors at the election site who shall observe the election and transport the ballots to the auditor's office. The auditor shall count the ballots and certify the count of votes for and against each measure and for each candidate appearing on the ballot. A separate count shall be made of any challenged ballots. A challenged ballot shall be counted as a normal ballot if documents or evidence are supplied to the auditor before 4:00 p.m. on the day after the election that, in the opinion of the auditor, are sufficient to establish the person's eligibility to vote.

Additionally, voting by absentee ballot shall be allowed in every special district. A request for an absentee ballot may be made by an eligible voter by mail or in person to the county auditor who supervises the special district elections. An absentee ballot shall be provided to each voter of a special district requesting such a ballot under this section. A person requesting such a ballot may present information establishing his or her eligibility to vote in such a special district. The auditor shall provide an absentee ballot to each person requesting an absentee ballot who is either included on the list of presumed eligible voters or who submits information which, in the auditor's opinion, establishes his or her eligibility to vote. The names of these persons so determined to be eligible to vote shall be added to the list of presumed eligible voters for the appropriate special district. The request for an absentee ballot must be made no more than forty-five days before the election. To be valid, absentee ballots must be postmarked on or before the day of the election and mailed to the county auditor. [1991 c 349 § 16; 1985 c 396 § 14.]

85.38.180 Special districts—Powers. A special district may:

(1) Engage in flood control activities, and investigate, plan, construct, acquire, repair, maintain, and operate improvements, works, projects, and facilities necessary to prevent inundation or flooding from rivers, streams, tidal waters or other waters. Such facilities include dikes, levees, dams, banks, revetments, channels, canals, and other works, appliances, machinery, and equipment.

(2) Engage in drainage control, storm water control, and surface water control activities, and investigate, plan, construct, acquire, repair, maintain, and operate improvements, works, projects, and facilities necessary to control and treat storm water, surface water, and flood water. Such facilities include drains, ditches, canals, nonsanitary sewers, pumps, and other works, appliances, machinery, and equipment.

(3) Engage in lake or river restoration, aquatic plant control, and water quality enhancement activities.

(4) Take actions necessary to protect life and property from inundation or flow of flood waters, storm waters, or surface waters.

(5) Acquire, purchase, condemn by power of eminent domain pursuant to chapters 8.08 and 8.25 RCW, or lease, in its own name, necessary property, property rights, facilities, and equipment.

(6) Sell or exchange surplus property, property rights, facilities, and equipment.

(7) Accept funds and property by loan, grant, gift, or otherwise from the United States, the state of Washington, or any other public or private source.

(8) Hire staff, employees, or services, or use voluntary labor.

(9) Sue and be sued.

(10) Cooperate with or join the United States, the state of Washington, or any other public or private entity or person for district purposes.

(11) Enter into contracts.

(12) Exercise any of the usual powers of a corporation for public purposes. [1991 c 349 § 17; 1985 c 396 § 19.]

85.38.217 Drainage and drainage improvement districts—Removal of area by first class city—Notice. Any portion of a drainage district or drainage improvement district located within the boundaries of a first class city operating a storm drain utility pursuant to RCW 35.67.030 may be removed from the drainage district or drainage improvement district by ordinance of the city. The removal of an area shall not result in the impairment of any contract nor remove the liability or obligation to finance district improvements that serve the area so removed as of the effective date of the ordinance. Residents of the district to be removed shall be given substantial notice of the impending action and the opportunity to respond to the action. [1991 c 28 § 3.]

85.38.225 Alternative dissolution procedure—Drainage and drainage improvement districts—Conditions. As an alternative to this chapter a drainage district or drainage improvement district located within the boundaries of a county storm drainage and surface water management utility, and which is not currently imposing assessments, may be dissolved by ordinance of the county legislative authority. If the alternative dissolution procedure in this section is used the following shall apply:

(1) The county storm drainage and surface water management utility shall assume responsibility for payment or settlement of outstanding debts of the dissolved drainage district or drainage improvement district.

(2) All assets, including money, funds, improvements, or property, real or personal, shall become assets of the county in which the dissolved drainage district or drainage improvement district was located.

(3) Notwithstanding RCW 85.38.220, the county storm drainage and surface water management utility may determine how to best manage, operate, maintain, improve, exchange, sell, or otherwise dispose of all property, real and personal, of the dissolved drainage district or drainage improvement district. [1991 c 28 § 2.]

Title 86 FLOOD CONTROL

Chapters

- 86.09** Flood control districts—1937 act.
- 86.12** Flood control by counties.
- 86.15** Flood control zone districts.
- 86.16** Flood plain management.
- 86.26** State participation in flood control maintenance

Chapter 86.09

FLOOD CONTROL DISTRICTS—1937 ACT

Sections

- 86.09.283 Board of directors—Compensation and expenses of members and employees.
- 86.09.377 Voting rights.

86.09.283 Board of directors—Compensation and expenses of members and employees. The board of directors may each receive up to fifty dollars for attendance at official meetings of the board and for each day or major part thereof for all necessary services actually performed in connection with their duties as director. The board shall fix the compensation to be paid to the directors, secretary, and all other agents and employees of the district. Compensation for the directors shall not exceed four thousand eight hundred dollars in one calendar year. A director is entitled to reimbursement for reasonable expenses actually incurred in connection with such business, including subsistence and lodging, while away from the director's place of residence, and mileage for use of a privately owned vehicle in accordance with chapter 42.24 RCW. [1991 c 349 § 24; 1985 c 396 § 61; 1965 c 26 § 8; 1937 c 72 § 95; RRS § 9663E-95. Formerly RCW 86.08.175, part, and 86.08.195, part.]

Severability—1985 c 396: See RCW 85.38.900.

86.09.377 Voting rights. Each qualified voter of a flood control district who owns more than ten acres of land within the district shall be entitled to two additional votes for each ten acres or major fraction thereof located within the district, up to a maximum total of forty votes for any voter, or in the case of community property, a maximum total of twenty votes per member of the marital community. [1991 c 349 § 4; 1985 c 396 § 22.]

Severability—1985 c 396: See RCW 85.38.900.

Chapter 86.12

FLOOD CONTROL BY COUNTIES

Sections

- 86.12.200 Comprehensive flood control management plan—Elements.
- 86.12.210 Comprehensive flood control management plan—Participation of local officials—Arbitration of disputed issues.
- 86.12.220 Advisory committees.

86.12.200 Comprehensive flood control management plan—Elements. The county legislative authority of any county may adopt a comprehensive flood control management plan for any drainage basin that is located wholly or partially within the county.

A comprehensive flood control management plan shall include the following elements:

(1) Designation of areas that are susceptible to periodic flooding, from inundation by bodies of water or surface water runoff, or both, including the river's meander belt or floodway;

(2) Establishment of a comprehensive scheme of flood control protection and improvements for the areas that are subject to such periodic flooding, that includes: (a) Determining the need for, and desirable location of, flood control improvements to protect or preclude flood damage to structures, works, and improvements, based upon a cost/benefit ratio between the expense of providing and maintaining these improvements and the benefits arising from these improvements; (b) establishing the level of flood protection that each portion of the system of flood control improvements will be permitted; (c) identifying alternatives to in-stream flood control work; (d) identifying areas where flood waters could be directed during a flood to avoid damage to buildings and other structures; and (e) identifying sources of revenue that will be sufficient to finance the comprehensive scheme of flood control protection and improvements;

(3) Establishing land use regulations that preclude the location of structures, works, or improvements in critical portions of such areas subject to periodic flooding, including a river's meander belt or floodway, and permitting only flood-compatible land uses in such areas;

(4) Establishing restrictions on construction activities in areas subject to periodic floods that require the flood proofing of those structures that are permitted to be constructed or remodeled; and

(5) Establishing restrictions on land clearing activities and development practices that exacerbate flood problems by increasing the flow or accumulation of flood waters, or the intensity of drainage, on low-lying areas. Land clearing activities do not include forest practices as defined in chapter 76.09 RCW.

A comprehensive flood control management plan shall be subject to the minimum requirements for participation in the national flood insurance program, requirements exceeding the minimum national flood insurance program that have been adopted by the department of ecology for a specific flood plain pursuant to RCW 86.16.031, and rules adopted by the department of ecology pursuant to RCW 86.26.050 relating to flood plain management activities. When a county plans under chapter 36.70A RCW, it may incorporate the portion of its comprehensive flood control management plan relating to land use restrictions in its comprehensive plan and development regulations adopted pursuant to chapter 36.70A RCW. [1991 c 322 § 3.]

Findings—Intent—1991 c 322: "(1) The legislature finds that:

(a) Floods pose threats to public health and safety including loss or endangerment to human life; damage to homes; damage to public

roads, highways, bridges, and utilities; interruption of travel, communication, and commerce; damage to private and public property; degradation of water quality; damage to fisheries, fish hatcheries, and fish habitat; harm to livestock; destruction or degradation of environmentally sensitive areas; erosion of soil, stream banks, and beds; and harmful accumulation of soil and debris in the beds of streams or other bodies of water and on public and private lands;

(b) Alleviation of flood damage to property and to public health and safety is a matter of public concern;

(c) Many land uses alter the pattern of runoff by decreasing the ability of upstream lands to store waters, thus increasing the rate of runoff and attendant downstream impacts; and

(d) Prevention of flood damage requires a comprehensive approach, incorporating storm water management and basin-wide flood damage protection planning.

(2) County legislative authorities are encouraged to use and coordinate all the regulatory, planning, and financing mechanisms available to those jurisdictions to address the problems of flooding in an equitable and comprehensive manner.

(3) It is the intent of the legislature to develop a coordinated and comprehensive state policy to address the problems of flooding and the minimization of flood damage." [1991 c 322 § 1.]

Purpose—1991 c 322: "The purpose of sections 3 through 13 of this act is to permit counties in cooperation and consultation with cities and towns to adopt a comprehensive system of flood control management and protection within drainage basins and to coordinate the flood control activities of the state, counties, cities, towns, and special districts within such drainage basins." [1991 c 322 § 2.]

86.12.210 Comprehensive flood control management plan—Participation of local officials—Arbitration of disputed issues. A comprehensive flood control management plan that includes an area within which a city or town, or a special district subject to chapter 85.38 RCW, is located shall be developed by the county with the full participation of officials from the city, town, or special district, including conservation districts, and appropriate state and federal agencies. Where a comprehensive flood control management plan is being prepared for a river basin that is part of the common boundary between two counties, the county legislative authority of the county preparing the plan may allow participation by officials of the adjacently located county.

Following adoption by the county, city, or town, a comprehensive flood control management plan shall be binding on each jurisdiction and special district that is located within an area included in the plan. If within one hundred twenty days of the county's adoption, a city or town does not adopt the comprehensive flood control management plan, the city or county shall request arbitration on the issue or issues in dispute. If parties cannot agree to the selection of an arbitrator, the arbitrator shall be selected according to the process described in RCW 7.04.050. The cost of the arbitrator shall be shared equally by the participating parties and the arbitrator's decision shall be binding. Any land use regulations and restrictions on construction activities contained in a comprehensive flood control management plan applicable to a city or town shall be minimum standards that the city or town may exceed. A city or town undertaking flood or storm water control activities consistent with the comprehensive flood control management plan shall retain authority over such activities. [1991 c 322 § 4.]

Findings—Intent—Purpose—1991 c 322: See notes following RCW 86.12.200.

86.12.220 Advisory committees. A county may create one or more advisory committees to assist in the development of proposed comprehensive flood control management plans and to provide general advice on flood problems. The advisory committees may include city and town officials, officials of special districts subject to chapter 85.38 RCW, conservation districts, appropriate state and federal officials, and officials of other counties and other interested persons. [1991 c 322 § 5.]

Findings—Intent—Purpose—1991 c 322: See notes following RCW 86.12.200.

Chapter 86.15

FLOOD CONTROL ZONE DISTRICTS

Sections

- 86.15.023 Zones not to include area in other zones.
- 86.15.040 Repealed.
- 86.15.178 Revenue bonds—Lien for delinquent service charges.

86.15.023 Zones not to include area in other zones. A board may not establish a zone including an area located in another zone unless this area is removed from the other zone, or the other zone is dissolved, as part of the action creating the new zone. [1991 c 322 § 9.]

Findings—Intent—Purpose—1991 c 322: See notes following RCW 86.12.200.

86.15.040 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

86.15.178 Revenue bonds—Lien for delinquent service charges. (1) The supervisors may authorize the issuance of revenue bonds to finance any flood control improvement or storm water control improvement. The bonds may be issued by the supervisors in the same manner as prescribed in RCW 36.67.510 through 36.67.570 pertaining to counties. The bonds shall be issued on behalf of the zone or participating zones when the improvement has by the resolution, provided in RCW 86.15.110, been found to be of benefit to a zone or participating zones. The bonds may be in any form, including bearer bonds or registered bonds.

Each revenue bond shall state on its face that it is payable from a special fund, naming the fund and the resolution creating the fund.

Revenue bond principal, interest, and all other related necessary expenses shall be payable only out of the appropriate special fund.

A zone or participating zones shall have a lien for delinquent service charges, including interest thereon, against the premises benefited by a flood control improvement or storm water control improvement, which lien shall be superior to all other liens and encumbrances except general taxes and local and special assessments. The lien shall be effective and shall be enforced and foreclosed in the same manner as provided for sewerage liens of cities and towns by RCW 35.67.200 through 35.67.290.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1991 c 322 § 10. Prior: 1983 c 315 § 23; 1983 c 167 § 212; 1967 ex.s. c 136 § 8.]

Findings—Intent—Purpose—1991 c 322: See notes following RCW 86.12.200.

Severability—1983 c 315: See note following RCW 90.03.500.

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

Chapter 86.16

FLOOD PLAIN MANAGEMENT

(Formerly: Flood control zones by state)

Sections

- 86.16.027 Repealed.
- 86.16.030 Repealed.
- 86.16.040 Repealed.
- 86.16.060 Repealed.
- 86.16.065 Repealed.
- 86.16.067 Repealed.
- 86.16.070 Repealed.
- 86.16.080 Repealed.
- 86.16.090 Repealed.
- 86.16.110 Appeals.
- 86.16.170 Repealed.
- 86.16.190 Livestock flood sanctuary areas.

86.16.027 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

86.16.030 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

86.16.040 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

86.16.060 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

86.16.065 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

86.16.067 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

86.16.070 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

86.16.080 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

86.16.090 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

86.16.110 Appeals. Any person, association, or corporation, public, municipal, or private, feeling aggrieved at any order, decision, or determination of the department or director pursuant to this chapter, affecting his or her interest, may have the same reviewed pursuant to RCW 43.21B.310. [1991 c 322 § 11. Prior: (Repealed by 1987 c 523 § 12); 1987 c 109 § 23; 1935 c 159 § 17; RRS § 9663A-17.]

Reviser's note: This section was repealed by 1987 c 523 § 12 without cognizance of its amendment by 1987 c 109 § 23, and was subsequently reenacted by 1991 c 322 § 11.

Findings—Intent—Purpose—1991 c 322: See notes following RCW 86.12.200.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

86.16.170 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

86.16.190 Livestock flood sanctuary areas. Local governments that have adopted flood plain management regulations pursuant to this chapter shall include provisions that allow for the establishment of livestock flood sanctuary areas at a convenient location within a farming unit that contains domestic livestock. Local governments may limit the size and configuration of the livestock flood sanctuary areas, but such limitation shall provide adequate space for the expected number of livestock on the farming unit and shall be at an adequate elevation to protect livestock. Modification to flood plain management regulations required pursuant to this section shall be within the minimum federal requirements necessary to maintain coverage under the national flood insurance program. [1991 c 322 § 17.]

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

Chapter 86.26

STATE PARTICIPATION IN FLOOD CONTROL MAINTENANCE

Sections

86.26.007	Flood control assistance account—Use.
86.26.050	Projects in which state will participate—Allocation of funds.
86.26.090	Scope of maintenance in which state will participate.
86.26.100	Agreement as to participation—Limit on amount.

86.26.007 Flood control assistance account—Use. The flood control assistance account is hereby established in the state treasury. At the beginning of each biennium the state treasurer shall transfer from the general fund to the flood control assistance account an amount of money which, when combined with money remaining in the account from the previous biennium, will equal four million dollars. Moneys in the flood control assistance account may be spent only after appropriation for purposes specified under this chapter. [1991 1st sp.s. c 13 § 24; 1986 c 46 § 1; 1985 c 57 § 88; 1984 c 212 § 1.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

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

86.26.050 Projects in which state will participate—Allocation of funds. (1) State participation shall be in such preparation of comprehensive flood control management plans under this chapter and chapter 86.12 RCW, cost sharing feasibility studies for new flood control projects, projects pursuant to section 33, chapter 322, Laws of 1991, and flood control maintenance projects as are affected with a general public and state interest, as differentiated from a private interest, and as are likely to bring about public benefits commensurate with the amount of state funds allocated thereto.

(2) No participation for flood control maintenance projects may occur with a county or other municipal corporation unless the director of ecology has approved the flood plain management activities of the county, city, or town having planning jurisdiction over the area where the flood control maintenance project will be, on the one hundred year flood plain surrounding such area.

The department of ecology shall adopt rules concerning the flood plain management activities of a county, city, or town that are adequate to protect or preclude flood damage to structures, works, and improvements, including the restriction of land uses within a river's meander belt or floodway to only flood-compatible uses. Whenever the department has approved county, city, and town flood plain management activities, as a condition of receiving an allocation of funds under this chapter, each revision to the flood plain management activities must be approved by the department of ecology, in consultation with the department of fisheries and the department of wildlife.

No participation with a county or other municipal corporation for flood control maintenance projects may occur unless the county engineer of the county within which the flood control maintenance project is located certifies that a comprehensive flood control management plan has been completed and adopted by the appropriate local authority, or is being prepared for all portions of the river basin or other area, within which the project is located in that county, that are subject to flooding with a frequency of one hundred years or less.

(3) Participation for flood control maintenance projects and preparation of comprehensive flood control management plans shall be made from grants made by the department of ecology from the flood control assistance account. Comprehensive flood control management plans, and any revisions to the plans, must be approved by the department of ecology, in consultation with the department of fisheries and the department of wildlife. The department may only grant financial assistance to local governments that, in the opinion of the department, are making good faith efforts to take advantage of, or comply with, federal and state flood control programs. [1991 c 322 § 6; 1988 c 36 § 64; 1986 c 46 § 3; 1985 c 454 § 1; 1984 c 212 § 4; 1951 c 240 § 7.]

Findings—Intent—Purpose—1991 c 322: See notes following RCW 86.12.200.

86.26.090 Scope of maintenance in which state will participate. The state shall participate with eligible local authorities in maintaining and restoring the normal and reasonably stable river and stream channel alignment and the normal and reasonably stable river and stream channel capacity for carrying off flood waters with a minimum of damage from bank erosion or overflow of adjacent lands and property; and in restoring, maintaining and repairing natural conditions, works and structures for the maintenance of such conditions. State participation in the repair of flood control facilities may include the enhancement of such facilities. The state shall likewise participate in the restoration and maintenance of natural conditions, works or structures for the protection of lands and other property from inundation or other damage by the sea or other bodies of water. Funds from the flood control assistance account shall not be available for maintenance of works or structures maintained solely for the detention or storage of flood waters. [1991 c 322 § 7; 1984 c 212 § 7; 1951 c 240 § 11.]

Findings—Intent—Purpose—1991 c 322: See notes following RCW 86.12.200.

86.26.100 Agreement as to participation—Limit on amount. State participation in the cost of any flood control maintenance project shall be provided for by a written memorandum agreement between the director of ecology and the legislative authority of the county submitting the request, which agreement, among other things, shall state the estimated cost and the percentage thereof to be borne by the state. In no instance, except on emergency projects, shall the state's share exceed one-half the cost of the project, to include project planning and design. Grants for cost sharing feasibility studies for new flood control projects shall not exceed fifty percent of the matching funds that are required by the federal government, and shall not exceed twenty-five percent of the total costs of the feasibility study. However, grants to prepare a comprehensive flood control management plan required under RCW 86.26.050 shall not exceed seventy-five percent of the full planning costs, but not to exceed amounts for either purpose specified in rule and regulation by the department of ecology. [1991 c 322 § 8; 1986 c 46 § 4; 1984 c 212 § 8; 1951 c 240 § 12.]

Findings—Intent—Purpose—1991 c 322: See notes following RCW 86.12.200.

Title 87 IRRIGATION

Chapters

- 87.03** Irrigation districts generally.
87.19 Refunding bonds—1923 act.

Chapter 87.03

IRRIGATION DISTRICTS GENERALLY

Sections	
87.03.435	Construction work—Bonds—Notice—Bids—Contracts.
87.03.436	Small works roster.
87.03.460	Compensation and expenses of directors, officers, employees.
87.03.553	Consolidated local improvement districts for bond issuance.

87.03.435 Construction work—Bonds—Notice—Bids—Contracts. (1) Any person to whom a contract may have been awarded for the construction of a canal or any of the works of the district, or any portion thereof, or for the furnishing of labor or material, shall enter into a bond with good and sufficient sureties, to be approved by the board of directors, payable to the district for its use, for at least twenty-five percent of the amount of the contract price, conditioned for the faithful performance of said contract, and with such further conditions as may be required by law in the case of contracts for public work, and as may be required by resolution of the board. All works shall be done under the direction and to the satisfaction of the engineer of the district, and be approved by the board. Except as provided in subsections (2) and (3) of this section and RCW 87.03.436, whenever in the construction of the district canal or canals, or other works, or the furnishing of materials therefor, the board of directors shall determine to let a contract or contracts for the doing of the work or the furnishing of the materials, a notice calling for sealed proposals shall be published. The notice shall be published in a newspaper in the county in which the office of the board is situated, and in any other newspaper which may be designated by the board, and for such length of time, not less than once each week for two weeks, as may be fixed by the board. At the time and place appointed in the notice for the opening of bids, the sealed proposals shall be opened in public, and as soon as convenient thereafter, the board shall let the work or the contract for the purchase of materials, either in portions or as a whole, to the lowest responsible bidder, or the board may reject any or all bids and readvertise, or may proceed to construct the work under its own superintendence.

(2) The provisions of this section in regard to public bidding shall not apply in cases where the board is authorized to exchange bonds of the district in payment for labor and material.

(3) The provisions of this section do not apply:

(a) In the case of any contract between the district and the United States;

(b) In the case of an emergency when the public interest or property of the district would suffer material injury or damage by delay, upon resolution of the board of directors or proclamation of an official designated by the board to act for the board during such emergencies. The resolution or proclamation shall declare the existence of the emergency and recite the facts constituting the emergency; or

(c) To purchases which are clearly and legitimately limited to a single source of supply or to purchases involving special facilities, services, or market conditions, in which instances the purchase price may be best established by direct negotiation. [1990 c 39 § 1; 1984 c 168 § 3; 1915 c 179 § 17; 1913 c 165 § 18; 1895 c 165 § 21; 1889–90 p 689 § 35; RRS § 7452. Formerly RCW 87.08.020.]

Official paper for publication: RCW 87.03.020.

Public contracts—Contractor's bond: Chapter 39.08 RCW.

87.03.436 Small works roster. All contract projects, the estimated cost of which is less than one hundred thousand dollars, may be awarded to a contractor on the small works roster. The small works roster shall be comprised of all responsible contractors who have requested to be on the list. The board of directors shall authorize by resolution a procedure for securing telephone and/or written quotations from the contractors on the small works roster to assure establishment of a competitive price and for awarding contracts to the lowest responsible bidder. Such procedure shall require that a good-faith effort be made to request quotations from all responsible contractors on the small works roster. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry. The small works roster shall be revised once a year. [1990 c 39 § 2.]

87.03.460 Compensation and expenses of directors, officers, employees. In addition to their reasonable expenses in accordance with chapter 42.24 RCW, the directors shall each receive an amount for attending meetings and while performing other services for the district. The amount shall be fixed by resolution and entered in the minutes of the proceedings of the board. It shall not exceed fifty dollars for each day or portion thereof spent by a director for such attendance or performance. The total amount of such additional compensation received by a director may not exceed four thousand eight hundred dollars in a calendar year. The board shall fix the compensation of the secretary and all other employees. [1990 c 38 § 1; 1984 c 168 § 4; 1980 c 23 § 1; 1979 c 83 § 3; 1975 1st ex.s. c 163 § 2; 1965 c 16 § 1; 1951 c 189 § 1; 1919 c 180 § 14; 1917 c 162 § 8; 1895 c 165 § 23; 1889–90 p 692 § 39; RRS § 7456. Formerly RCW 87.08.100.]

87.03.553 Consolidated local improvement districts for bond issuance. For the purpose of issuing bonds only, the governing body of any irrigation district may authorize the establishment of consolidated local improvement districts. The local improvements within such consolidated districts need not be adjoining, vicinal, or neighboring. If the governing body orders the creation of such consolidated local improvement districts, the moneys received from the installment payment of the principal of and interest on assessments levied within original local assessment districts shall be deposited in a consolidated local improvement district bond redemption fund

to be used to redeem outstanding consolidated local improvement district bonds. [1991 c 8 § 1.]

Chapter 87.19 REFUNDING BONDS—1923 ACT

Sections

87.19.020 Notice and conduct of election.

87.19.020 Notice and conduct of election. The notice of election provided for in this chapter shall be given and the election held in all respects in accordance with RCW 87.03.200, except in each county with a population of one hundred twenty-five thousand or more, where the notice and election shall be held in the manner provided by law for such counties. [1991 c 363 § 160; 1923 c 161 § 6; RRS § 7434–6.]

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

Elections by lesser constituencies—Special elections: RCW 29.13.020.

Times for holding elections and primaries: Chapter 29.13 RCW.

Title 88 NAVIGATION AND HARBOR IMPROVEMENTS

Chapters

- 88.02 Watercraft registration.**
- 88.04 Charter boat safety act.**
- 88.08 Specific acts prohibited.**
- 88.12 Regulation of motor boats.**
- 88.16 Pilotage act.**
- 88.32 River and harbor improvements.**
- 88.40 Transport of petroleum products—Financial responsibility.**
- 88.44 Oil spill first response.**
- 88.46 Vessel oil spill prevention and response.**

Chapter 88.02 WATERCRAFT REGISTRATION

Sections

- 88.02.030 Exceptions from vessel registration.
- 88.02.035 Confidential vessel registration, law enforcement purposes.
- 88.02.070 Certificates of title.
- 88.02.095 Use of vessel in negligent manner or while under the influence of alcohol or drugs prohibited—Penalty.
- 88.02.220 Receipt of cash or negotiable instrument before delivery of vessel—Trust account.
- 88.02.230 Exemption from vessel dealer requirements.

88.02.030 Exceptions from vessel registration. Vessel registration is required under this chapter except for the following:

- (1) Military or public vessels of the United States, except recreational-type public vessels;

(2) Vessels owned by a state or subdivision thereof, used principally for governmental purposes and clearly identifiable as such;

(3) Vessels either (a) registered or numbered under the laws of a country other than the United States; or (b) having a valid United States customs service cruising license issued pursuant to 19 C.F.R. Sec. 4.94;

(4) Vessels that have been issued a valid number under federal law or by an approved issuing authority of the state of principal operation. However, a vessel that is validly registered in another state but that is removed to this state for principal use is subject to registration under this chapter. The issuing authority for this state shall recognize the validity of the numbers previously issued for a period of sixty days after arrival in this state;

(5) Vessels owned by a resident of another state if the vessel is located upon the waters of this state exclusively for repairs or reconstruction, or any testing related to the repair or reconstruction conducted in this state if an employee of the repair facility is on board the vessel during any testing: PROVIDED, That any vessel owned by a resident of another state is located upon the waters of this state exclusively for repairs, reconstruction or testing for a period longer than sixty days, that the non-resident shall file an affidavit with the department of revenue verifying the vessel is located upon the waters of this state for repair, reconstruction or testing and shall continue to file such affidavit every sixty days thereafter, while the vessel is located upon the waters of this state exclusively for repairs, reconstruction or testing;

(6) Vessels equipped with propulsion machinery of less than ten horsepower that:

(a) Are owned by the owner of a vessel for which a valid vessel number has been issued;

(b) Display the number of that numbered vessel followed by the suffix "1" in the manner prescribed by the department; and

(c) Are used as a tender for direct transportation between that vessel and the shore and for no other purpose;

(7) Vessels under sixteen feet in overall length which have no propulsion machinery of any type or which are not used on waters subject to the jurisdiction of the United States or on the high seas beyond the territorial seas for vessels owned in the United States and are powered by propulsion machinery of ten or less horsepower;

(8) Vessels with no propulsion machinery of any type for which the primary mode of propulsion is human power;

(9) Vessels which are temporarily in this state undergoing repair or alteration;

(10) Vessels primarily engaged in commerce which have or are required to have a valid marine document as a vessel of the United States. Commercial vessels which the department of revenue determines have the external appearance of vessels which would otherwise be required to register under this chapter, must display decals issued annually by the department of revenue that indicate the vessel's exempt status; and

(11) Vessels primarily engaged in commerce which are owned by a resident of a country other than the

United States. [1991 c 339 § 30. Prior: 1989 c 393 § 13; 1989 c 102 § 1; 1985 c 452 § 1; 1984 c 250 § 2; 1983 2nd ex.s. c 3 § 44; 1983 c 7 § 16.]

Effective date—1985 c 452: "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 July 1, 1985." [1985 c 452 § 2.]

Construction—**Severability**—**Effective dates**—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Commission to adopt rules: RCW 88.36.110.

Partial exemption from ad valorem taxes of ships and vessels exempt from excise tax under RCW 88.02.030(10): RCW 84.36.080.

88.02.035 Confidential vessel registration, law enforcement purposes. (1) The department may issue confidential vessel registration for law enforcement purposes only to units of local government and to agencies of the federal government.

(2) The department shall limit confidential vessel registrations owned or operated by the state of Washington or by any officer or employee thereof, to confidential, investigative, or undercover work of state law enforcement agencies.

(3) The director may adopt rules governing applications for and the use of confidential vessel registrations by law enforcement and other public agencies. [1991 c 339 § 32.]

88.02.070 Certificates of title. (1) The department shall provide for the issuance of vessel certificates of title. Applications for certificates may be made through the agents appointed under RCW 88.02.040. The fee for a vessel certificate of title is five dollars. Fees for vessel certificates of title shall be deposited in the general fund. Security interests in vessels subject to the requirements of this chapter and attaching after July 1, 1983, shall be perfected only by indication upon the vessel's title certificate. The provisions of chapters 46.12 and 46.16 RCW relating to motor vehicle certificates of registration, titles, certificate issuance, ownership transfer, and perfection of security interests, and other provisions which may be applied to vessels subject to this chapter, may be so applied by rule of the department if they are not inconsistent with this chapter.

(2) Whenever a vessel is to be registered for the first time as required by this chapter, except for a vessel having a valid marine document as a vessel of the United States, application shall be made at the same time for a certificate of title. Any person who purchases or otherwise obtains majority ownership of any vessel subject to the provisions of this chapter, except for a vessel having a valid marine document as a vessel of the United States, shall within fifteen days thereof apply for a new certificate of title which shows the vessel's change of ownership.

(3) Security interests may be released or acted upon as provided by the law under which they arose or were perfected. No new security interest or renewal or extension of an existing security interest is affected except as provided under the terms of this chapter and RCW 46.12.095.

(4) Notice shall be given to the issuing authority by the owner indicated on the certificate of registration within fifteen days of the occurrence of any of the following: Any change of address of owner; destruction, loss, abandonment, theft, or recovery of the vessel; or loss or destruction of a valid certificate of registration on the vessel.

(5) Within five days, excluding Saturdays, Sundays, and state and federal holidays, the owner shall notify the department in writing, on the appropriate form, of the date of the sale or transfer, the name and address of the owner and of the transferee, and such description of the vessel, including the hull identification number, the vessel decal number, or both, as may be required by the department. [1991 c 339 § 31; 1985 c 258 § 4; 1983 2nd ex.s. c 3 § 46.]

Effective date—1985 c 258: "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 June 30, 1985." [1985 c 258 § 13.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

88.02.095 Use of vessel in negligent manner or while under the influence of alcohol or drugs prohibited—

Penalty. (1) It shall be unlawful for any person to operate a vessel in a negligent manner. For the purpose of this section, to "operate in a negligent manner" shall be construed to mean the operation of a vessel in such manner as to endanger or be likely to endanger any persons or property or to operate at a rate of speed greater than will permit the operator in the exercise of reasonable care to bring the vessel to a safe stop.

(2) A person is guilty of operating a vessel while under the influence of intoxicating liquor or any drug if the person operates a vessel within this state while:

(a) The person has 0.10 grams or more of alcohol per two hundred ten liters of breath, as shown by analysis of the person's breath made under RCW 46.61.506; or

(b) The person has 0.10 percent or more by weight of alcohol in the person's blood, as shown by analysis of the person's blood made under RCW 46.61.506; or

(c) The person is under the influence of or affected by intoxicating liquor or any drug; or

(d) The person is under the combined influence of or affected by intoxicating liquor and any drug.

The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section. A person cited under this subsection may upon request be given a breath test for breath alcohol or may request to have a blood sample taken for blood alcohol analysis. An arresting officer shall administer field sobriety tests when circumstances permit.

(3) For the purposes of this section, "vessel" means any watercraft used or capable of being used as a means of transportation on the water, other than a seaplane.

(4) For the purpose of this section, "vessel operator" means a person who is in actual physical control of a vessel.

(5) A violation of this section is a misdemeanor, punishable by up to ninety days in jail and by a fine of not more than one thousand dollars. In addition, the court may order the defendant to pay restitution for any damages or injuries resulting from the offense. [1990 c 231 § 3; 1990 c 31 § 1; 1987 c 373 § 6; 1986 c 153 § 6; 1985 c 267 § 2.]

Reviser's note: This section was amended by 1990 c 31 § 1 and by 1990 c 231 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Severability—1990 c 231: See notes following RCW 88.12.070.

Legislative finding, purpose—Severability—1987 c 373: See notes following RCW 46.61.502.

88.02.220 Receipt of cash or negotiable instrument before delivery of vessel—Trust account. A vessel dealer who receives cash or a negotiable instrument of deposit in excess of one thousand dollars, or a deposit of any amount that will be held for more than fourteen calendar days, shall place the funds in a separate trust account.

(1) The cash or negotiable instrument must be set aside immediately upon receipt for the trust account, or endorsed to such a trust account immediately upon receipt.

(2) The cash or negotiable instrument must be deposited in the trust account by the close of banking hours on the day following the receipt.

(3) After delivery of the purchaser's vessel the vessel dealer shall remove the deposited funds from the trust account.

(4) The dealer shall not commingle the purchaser's funds with any other funds at any time.

(5) The funds shall remain in the trust account until the delivery of the purchased vessel. However, upon written agreement from the purchaser, the vessel dealer may remove and release trust funds before delivery. [1991 c 339 § 33; 1987 c 149 § 11.]

Effective date—1987 c 149: See note following RCW 88.02.060.

88.02.230 Exemption from vessel dealer requirements. (1) The department may exempt from compliance with the vessel dealer requirements of this chapter, any person who is engaged in the business of selling in this state at wholesale or retail, human-powered watercraft which is: (a) Under sixteen feet in length; (b) unable to be powered by propulsion machinery or wind propulsion as designed by the manufacturer; and (c) not designed for use on commonly-used navigable waters.

(2) Any person engaged in the business of selling at wholesale or retail, exempt and nonexempt watercraft under this section shall only be required to comply with the provisions of this chapter in regard to the sale of nonexempt watercraft. [1990 c 250 § 90.]

Severability—1990 c 250: See note following RCW 46.16.301.

Chapter 88.04

CHARTER BOAT SAFETY ACT

(Formerly: Passenger watercraft for hire—Regulation)

Sections

88.04.015	Definitions.
88.04.075	Exemptions from chapter.

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

(1) "Department" means the department of labor and industries.

(2) "Carrying passengers or cargo" means the transporting of any person or persons or cargo on a vessel for a fee or other consideration.

(3) "Charter boat" means a vessel or barge operating on inland navigable waters of the state of Washington which is not inspected or licensed by the United States coast guard and over which the United States coast guard does not exercise jurisdiction and which is rented, leased, or chartered to carry more than six persons or cargo.

(4) "Equipment" means a system, part, or component of a vessel as originally manufactured, or a system, part, or component manufactured or sold for replacement, repair, or improvement of a system, part, or component of a vessel; an accessory or equipment for, or appurtenance to a vessel; or a marine safety article, accessory, or equipment, including radio equipment, intended for use by a person on board a vessel.

(5) "Inland navigable waters" means all waters within the territorial limits of the state of Washington, shoreward of the navigational demarcation lines dividing the high seas from harbors, rivers, lakes, and other inland waters of the state.

(6) "Operate" means to start or operate any engine which propels a vessel, or to physically control the motion, direction, or speed of a vessel.

(7) "Owner" means a person who claims lawful possession of a vessel by virtue of legal title or an equitable interest in a vessel which entitles that person to possession of the vessel; but does not include charterers and lessees.

(8) "Passenger" means a person carried on board a charter boat except:

- (a) The owner of the vessel or the owner's agent; or
- (b) The captain and members of the vessel's crew.

(9) "Operator's license" means a vessel operator's license issued by the United States coast guard or department for the specified tonnage and route of the vessel.

(10) "Vessel" means every description of motorized watercraft, other than a bare-boat charter boat, sea-plane, or sailboat, used or capable of being used to transport more than six passengers or cargo on water for rent, lease, or hire.

(11) "Bare-boat charter" means the unconditional lease, rental, or charter of a boat by the owner, or his or her agent, to a person who by written agreement, or contract, assumes all responsibility and liability for the operation, navigation, and provisioning of the boat during the term of the agreement or contract, except when a

captain or crew is required or provided by the owner or owner's agents to be hired by the charterer to operate the vessel. [1991 c 45 § 1; 1989 c 295 § 2.]

88.04.075 Exemptions from chapter. The provisions of this chapter shall not apply to:

(1) A vessel that is a charter boat but is being used by the documented or registered owner of the charter boat exclusively for the owner's own noncommercial or personal pleasure purposes;

(2) A vessel owned by a person or corporate entity which is donated and used by a person or nonprofit organization to transport passengers for charitable or noncommercial purposes, regardless of whether consideration is directly or indirectly paid to the owner;

(3) A vessel that is rented, leased, or hired by an operator to transport passengers for noncommercial or personal pleasure purposes;

(4) A vessel used exclusively for, or incidental to, an educational purpose; or

(5) A bare-boat charter boat. [1991 c 45 § 2; 1989 c 295 § 11.]

Chapter 88.08

SPECIFIC ACTS PROHIBITED

Sections

88.08.070	Failure to stop for law enforcement officer.
88.08.080	Eluding a law enforcement vessel.

88.08.070 Failure to stop for law enforcement officer. Any operator of a vessel who willfully fails to stop when requested or signaled to do so by a person reasonably identifiable as a law enforcement officer is guilty of a gross misdemeanor. [1990 c 235 § 1.]

88.08.080 Eluding a law enforcement vessel. Any operator of a vessel who willfully fails or refuses to immediately bring the vessel to a stop and who operates the vessel in a manner indicating a wanton or willful disregard for the lives or property of others while attempting to elude a pursuing law enforcement vessel, after being given a visual or audible signal to bring the vessel to a stop, shall be guilty of a class C felony punishable under chapter 9A.20 RCW. The signal given by the law enforcement officer may be by hand, voice, emergency light, or siren. The officer giving such a signal shall be in uniform and his or her vessel shall be appropriately marked showing it to be an official law enforcement vessel. [1990 c 235 § 2.]

Chapter 88.12

REGULATION OF MOTOR BOATS

Sections

88.12.040	Muffling devices—Cutout devices unlawful.
88.12.070	Water skiing safety—Requirements.

88.12.040 Muffling devices—Cutout devices unlawful. (1) All such motor driven boats or vessels shall

use an adequate and operating muffling device with a series of baffles and chambers, which shall effectively blend the exhaust and motor noise in such a manner so as to preclude excessive or unusual noise.

(2) It shall be unlawful to remove, disable, bypass, or use a cutout device on any muffler or muffling device of any vessel, except while engaged in organized racing events in an area designated for that purpose. [1990 c 231 § 2; 1933 c 72 § 4; RRS § 9851-4.]

Effective date—Severability—1990 c 231: See notes following RCW 88.12.070.

88.12.070 Water skiing safety—Requirements. (1)

The purpose of this section is to promote safety in water skiing on the waters of Washington state, provide a means of ensuring safe water skiing and promote the enjoyment of water skiing.

(2) When used in this section, the following words and phrases shall have the meanings designated in this section unless a different meaning is expressly provided or unless the context clearly indicates otherwise.

(a) "Operator" means the individual in physical control of a vessel. The operator of a personal watercraft shall be at least fourteen years of age.

(b) "Observer" means the individual riding in a vessel who shall be responsible for observing the water skier at all times. The observer and the operator shall not be the same person. The observer shall be an individual who meets the minimum qualifications for an observer established by rules of the state parks and recreation commission.

(c) "Personal watercraft" means a vessel of less than sixteen feet which uses a motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

(d) "Vessel" means every watercraft used or capable of being used as a means of transportation on the water, other than a seaplane.

(e) "Waters of Washington state" means any waters within the territorial limits of Washington state.

(3) No vessel which has in tow a person or persons on water skis, or similar contrivance shall be operated on any waters of Washington state unless such craft shall be occupied by at least an operator and an observer. The observer shall continuously observe the person or persons being towed and shall display a flag immediately after the towed person or persons fall into the water, and during the time preparatory to skiing while the person or persons are still in the water. Such flag shall be a bright red or brilliant orange color, measuring at least twelve inches square, mounted on a pole not less than twenty-four inches long and displayed as to be visible from every direction. This subsection does not apply to a personal watercraft, the design of which makes no provision for carrying an operator or any other person on board, and that is actually operated by the person or persons being towed. Every remote-operated personal watercraft

shall have a flag attached which meets the requirements of this subsection.

(4) No person shall engage or attempt to engage in water skiing, or operate or ride on a personal watercraft, without wearing an adequate and effective United States coast guard approved type I, II, III, or V personal flotation device in good and serviceable condition and of appropriate size, or a wet suit which is approved for personal flotation by the United States coast guard. A person operating a personal watercraft equipped by the manufacturer with a lanyard type engine cutoff switch must attach the lanyard to his or her person, clothing, or personal flotation device as is appropriate for the specific vessel. It is unlawful for any person to remove or disable a cutoff switch which was installed by the manufacturer.

(5) No person shall engage or attempt to engage in water skiing, or operate any vessel to tow a water skier, on the waters of Washington state during the period from one hour after sunset until one hour prior to sunrise.

(6) No person shall operate a personal watercraft on the waters of Washington state during the period from sunset until sunrise.

(7) No person engaged in water skiing, or the operation of a personal watercraft, shall conduct himself or herself in a negligent manner that endangers, or is likely to endanger, any person or property.

(8) The requirements of subsections (3), (4), and (5) of this section shall not apply to persons engaged in tournaments, competitions, or exhibitions that have been authorized or otherwise permitted by the appropriate agency having jurisdiction and authority to authorize such events.

(9) It shall be unlawful for a person to lease, hire, or rent a personal watercraft to any person who is under sixteen years of age. [1990 c 231 § 1; 1989 c 241 § 1.]

Effective date—1990 c 231: "This act shall take effect July 1, 1990." [1990 c 231 § 4.]

Severability—1990 c 231: "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." [1990 c 231 § 5.]

Chapter 88.16 PILOTAGE ACT

Sections

88.16.010	Board of pilotage commissioners—Created—Chairperson—Members—Terms—Qualifications—Vacancies—Quorum.
88.16.090	Pilots' licenses—Qualifications—Duration—Annual fee—Written and oral examinations—Physical examinations—Familiarization trips—Penalty—Reporting requirements.
88.16.100	Pilots' licenses—Revocation, suspension, etc., of—Reprimand or fine—Other disciplinary actions—Procedure—Judicial review.
88.16.105	Size and type of vessels prescribed for newly licensed pilot—Rules.
88.16.110	Pilots to file quarterly report—Contents.
88.16.170	Oil tankers—Intent and purpose.
88.16.180	Oil tankers—State licensed pilot required.
88.16.195	Oil tankers—Not to exceed speed of escorting tug.

- 88.16.200 Vessel designed to carry liquefied natural or propane gas to adhere to oil tanker provisions.
- 88.16.210 Reckless operation of a tank vessel—Penalty.
- 88.16.220 Operation of a vessel while under influence of liquor or drugs—Penalty.
- 88.16.230 Breath or blood analysis.
- 88.16.240 Limited immunity for blood withdrawal.

88.16.010 Board of pilotage commissioners—Created—Chairperson—Members—Terms—Qualifications—Vacancies—Quorum.

(1) The board of pilotage commissioners of the state of Washington is hereby created and shall consist of the assistant secretary of marine transportation of the department of transportation of the state of Washington, or the assistant secretary's designee who shall be an employee of the marine division, who shall be chairperson, the administrator of the office of marine safety, or the administrator's designee, and seven members appointed by the governor and confirmed by the senate. Each of the appointed commissioners shall be appointed for a term of four years from the date of the member's commission. No person shall be eligible for appointment to the board unless that person is at the time of appointment eighteen years of age or over and a citizen of the United States and of the state of Washington. Two of the appointed commissioners shall be pilots licensed under this chapter and actively engaged in piloting upon the waters covered by this chapter for at least three years immediately preceding the time of appointment and while serving on the board. One pilot shall be from the Puget Sound pilotage district and one shall be from the Grays Harbor pilotage district. Two of the appointed commissioners shall be actively engaged in the ownership, operation, or management of deep sea cargo and/or passenger carrying vessels for at least three years immediately preceding the time of appointment and while serving on the board. One of said shipping commissioners shall be a representative of American and one of foreign shipping. One of the commissioners shall be a representative from a recognized environmental organization concerned with marine waters. The remaining commissioners shall be persons interested in and concerned with pilotage, maritime safety, and marine affairs, with broad experience related to the maritime industry exclusive of experience as either a state licensed pilot or as a shipping representative.

(2) Any vacancy in an appointed position on the board shall be filled by the governor for the remainder of the unfilled term, subject to confirmation by the senate.

(3) Five members of the board shall constitute a quorum. At least one pilot, one shipping representative, and one public member must be present at every meeting. All commissioners and the chairperson shall have a vote. [1991 c 200 § 1001; 1987 c 485 § 1; 1979 ex.s. c 207 § 1; 1977 ex.s. c 337 § 2; 1977 ex.s. c 151 § 73; 1971 ex.s. c 292 § 58; 1935 c 18 § 1; RRS § 9871-1. Prior: 1888 p 175 § 1.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Severability—1977 ex.s. c 337: See note following RCW 88.16.005.

Federal requirements—Severability—1977 ex.s. c 151: See RCW 47.98.070 and 47.98.080.

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

88.16.090 Pilots' licenses—Qualifications—Duration—Annual fee—Written and oral examinations—Physical examinations—Familiarization trips—Penalty—Reporting requirements. (1) A person may pilot any vessel subject to the provisions of this chapter on waters covered by this chapter only if appointed and licensed to pilot such vessels on said waters under and pursuant to the provisions of this chapter.

(2) A person is eligible to be appointed a pilot if the person is a citizen of the United States, over the age of twenty-five years and under the age of seventy years, a resident of the state of Washington at the time of appointment and only if the pilot applicant holds as a minimum, a United States government license as a master of ocean or near coastal steam or motor vessels of not more than one thousand six hundred gross tons or as a master of inland steam or motor vessels of not more than one thousand six hundred gross tons, such license to have been held by the applicant for a period of at least two years prior such license to have been held by the applicant for a period of at least two years prior to taking the Washington state pilotage examination and a first class United States endorsement without restrictions on that license to pilot in the pilotage districts for which the pilot applicant desires to be licensed, and if the pilot applicant meets such other qualifications as may be required by the board. A person applying for a license under this section shall not have been convicted of an offense involving drugs or the personal consumption of alcohol in the twelve months prior to the date of application. This restriction does not apply to license renewals under this section.

(3) Pilots shall be licensed hereunder for a term of five years from and after the date of the issuance of their respective state licenses. Such licenses shall thereafter be renewed as of course, unless the board shall withhold same for good cause. Each pilot shall pay to the state treasurer an annual license fee established by the board of pilotage commissioners pursuant to chapter 34.05 RCW, but not to exceed one thousand five hundred dollars, to be placed in the state treasury to the credit of the pilotage account. The board may assess partially active or inactive pilots a reduced fee.

(4) Pilot applicants shall be required to pass a written and oral examination administered and graded by the board which shall test such applicants on this chapter, the rules of the board, local harbor ordinances, and such other matters as may be required to compliment the United States examinations and qualifications. The board shall hold examinations at such times as will, in the judgment of the board, ensure the maintenance of an efficient and competent pilotage service. An examination shall be scheduled for the Puget Sound pilotage district if there are three or fewer successful candidates from the previous examination who are waiting to become pilots in that district.

(5) The board shall develop an examination and grading sheet for each pilotage district, for the testing and grading of pilot applicants. The examinations shall be administered to pilot applicants and shall be updated as required to reflect changes in law, rules, policies, or procedures. The board may appoint a special independent examination committee or may contract with a firm knowledgeable and experienced in the development of professional tests for development of said examinations. Active licensed state pilots may be consulted for the general development of examinations but shall have no knowledge of the specific questions. The pilot members of the board may participate in the grading of examinations. If the board does appoint a special examination development committee it is authorized to pay the members of said committee the same compensation and travel expenses as received by members of the board. When grading examinations the board shall carefully follow the grading sheet prepared for that examination. The board shall develop a "sample examination" which would tend to indicate to an applicant the general types of questions on pilot examinations, but such sample questions shall not appear on any actual examinations. Any person who willfully gives advance knowledge of information contained on a pilot examination is guilty of a gross misdemeanor.

(6) All pilots and applicants are subject to an annual physical examination by a physician chosen by the board. The physician shall examine the applicant's heart, blood pressure, circulatory system, lungs and respiratory system, eyesight, hearing, and such other items as may be prescribed by the board. After consultation with a physician and the United States coast guard, the board shall establish minimum health standards to ensure that pilots licensed by the state are able to perform their duties. Within ninety days of the date of each annual physical examination, and after review of the physician's report, the board shall make a determination of whether the pilot or candidate is fully able to carry out the duties of a pilot under this chapter. The board may in its discretion check with the appropriate authority for any convictions of offenses involving drugs or the personal consumption of alcohol in the prior twelve months.

(7) The board shall prescribe, pursuant to chapter 34.05 RCW, a number of familiarization trips, between a minimum number of twenty-five and a maximum of one hundred, which pilot applicants must make in the pilotage district for which they desire to be licensed. Familiarization trips any particular applicant must make are to be based upon the applicant's vessel handling experience.

(8) The board may require vessel simulator training for a pilot applicant and shall require vessel simulator training for a pilot subject to RCW 88.16.105. The board shall also require vessel simulator training in the first year of active duty for a new pilot and at least once every five years for all active pilots.

(9) The board shall prescribe, pursuant to chapter 34.05 RCW, such reporting requirements and review procedures as may be necessary to assure the accuracy and

validity of license and service claims, and records of familiarization trips of pilot candidates. Willful misrepresentation of such required information by a pilot candidate shall result in disqualification of the candidate.

(10) The board shall adopt rules to establish time periods and procedures for additional training trips and retesting as necessary for pilots who at the time of their licensing are unable to become active pilots. [1991 c 200 § 1002. Prior: 1990 c 116 § 27; 1990 c 112 § 1; 1987 c 264 § 2; 1986 c 122 § 1; 1981 c 303 § 1; 1979 ex.s. c 207 § 3; 1977 ex.s. c 337 § 7; 1967 c 15 § 5; 1935 c 18 § 8; RRS § 9871-8; prior: 1907 c 147 § 1; 1888 p 176 § 8.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

Severability—1977 ex.s. c 337: See note following RCW 88.16.005.

88.16.100 Pilots' licenses—Revocation, suspension, etc., of—Reprimand or fine—Other disciplinary actions—Procedure—Judicial review. (1) The board shall have power on its own motion or, in its discretion, upon the written request of any interested party, to investigate the performance of pilotage services subject to this chapter and to issue a reprimand, impose a fine against a pilot in an amount not to exceed five thousand dollars, suspend, withhold, or revoke the license of any pilot, or any combination of the above, for misconduct, incompetency, inattention to duty, intoxication, or failure to perform his duties under this chapter, or violation of any of the rules or regulations provided by the board for the government of pilots. The board may partially or totally stay any disciplinary action authorized in this subsection and subsection (2) of this section. The board shall have the power to require that a pilot satisfactorily complete a specific course of training or treatment.

(2) In all instances where a pilot licensed under this chapter performs pilot services on a vessel exempt under RCW 88.16.070, the board may on its own motion, or in its discretion upon the written request of any interested party, investigate whether the services were performed in a professional manner consistent with sound maritime practices. If the board finds that the pilotage services were performed in a manner that constitutes an act of incompetence, misconduct, or negligence so as to endanger life, limb, or property, or violated or failed to comply with state laws or regulations intended to promote marine safety or to protect navigable waters, the board may issue a reprimand, impose a fine against a pilot in an amount not to exceed five thousand dollars, suspend, withhold, or revoke the state pilot license, or any combination of the above. The board shall have the power to require that a pilot satisfactorily complete a specific course of training or treatment.

(3) The board shall implement a system of specified disciplinary actions or corrective actions, including

training or treatment, that will be taken when a state licensed pilot in a specified period of time has had multiple disciplinary actions taken against the pilot's license pursuant to subsections (1) and (2) of this section. In developing these disciplinary or corrective actions, the board shall take into account the cause of the disciplinary action and the pilot's previous record.

(4) The board shall immediately review the pilot's license of a pilot who has been convicted within the prior twelve months of any offense involving drugs or the personal consumption of alcohol while on duty, including an offense of operation of a vehicle or vessel while under the influence of alcohol or drugs. After a hearing held pursuant to subsection (5) of this section:

(a) The board shall order a pilot who has been found to have been convicted within the prior twelve months of an offense involving drugs or the personal consumption of alcohol while on duty and who has not been convicted of another offense involving drugs or the personal consumption of alcohol in the previous five years to actively participate in and satisfactorily complete a specific program of treatment. The board may impose other sanctions it determines are appropriate. If the pilot does not satisfactorily complete the program of treatment, the board shall suspend, revoke, or withhold the pilot's license until the treatment is completed; and

(b) The board shall suspend for up to one year the license of a pilot found to have been convicted within the prior twelve months of a second or subsequent offense involving drugs or the personal consumption of alcohol while on duty.

(5) When the board determines that reasonable cause exists to issue a reprimand, impose a fine, suspend, revoke, or withhold any pilot's license or require training or treatment under subsection (1), (2), or (4) of this section, it shall forthwith prepare and personally serve upon such pilot a notice advising him of the board's intended action, the specific grounds therefor, and the right to request a hearing to challenge the board's action. The pilot shall have thirty days from the date on which notice is served to request a full hearing before an administrative law judge on the issue of the reprimand, fine, suspension, revocation, or withholding of his pilot's license, or requiring treatment or training. The board's proposed reprimand, fine, suspension, revocation, or withholding of a license, or requiring treatment or training shall become final upon the expiration of thirty days from the date notice is served, unless a hearing has been requested prior to that time. When a hearing is requested the board shall request the appointment of an administrative law judge under chapter 34.12 RCW who has sufficient experience and familiarity with pilotage matters to be able to conduct a fair and impartial hearing. The hearing shall be governed by the provisions of Title 34 RCW. All final decisions of the administrative law judge shall be subject to review by the superior court of the state of Washington for Thurston county or by the superior court of the county in which the pilot maintains his residence or principal place of business, to which court any case with all the papers and proceedings

therein shall be immediately certified by the administrative law judge if requested to do so by any party to the proceedings at any time within thirty days after the date of any such final decision. No appeal may be taken after the expiration of thirty days after the date of final decision. Any case so certified to the superior court shall be tried de novo and after certification of the record to said superior court the proceedings shall be had as in a civil action. Moneys collected from fines under this section shall be deposited in the pilotage account.

(6) The board shall have the power, on an emergency basis, to temporarily suspend a state pilot's license: (a) When a pilot has been involved in any vessel accident where there has been major property damage, loss of life, or loss of a vessel, or (b) where there is a reasonable cause to believe that a pilot has diminished mental capacity or is under the influence of drugs, alcohol, or other substances, when in the opinion of the board, such an accident or physical or mental impairment would significantly diminish that pilot's ability to carry out pilotage duties and that the public health, safety, and welfare requires such emergency action. The board shall make a determination within seventy-two hours whether to continue the suspension. The board shall develop rules for exercising this authority including procedures for the chairperson or vice-chairperson of the board to temporarily order such suspensions, emergency meetings of the board to consider such suspensions, the length of suspension, opportunities for hearings, and an appeal process. The board shall develop rules under chapter 34.05 RCW.

(7) The board shall immediately notify the United States coast guard that it has revoked or suspended a license pursuant to this section and that a suspended or revoked license has been reinstated. [1990 c 116 § 28; 1987 c 392 § 1; 1986 c 121 § 1; 1981 c 67 § 36; 1977 ex.s. c 337 § 12; 1971 ex.s. c 297 § 4; 1935 c 18 § 13; RRS § 9871-13. Prior: 1888 p 178 § 10.]

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

Severability—1987 c 392: "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." [1987 c 392 § 2.]

Severability—1986 c 121: "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." [1986 c 121 § 2.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

Severability—1977 ex.s. c 337: See note following RCW 88.16.005.

88.16.105 Size and type of vessels prescribed for newly licensed pilot—Rules. The board shall prescribe, pursuant to chapter 34.05 RCW, rules governing the size and type of vessels which a newly licensed pilot may be assigned to pilot on the waters of this state and whether the assignment involves docking or undocking a vessel. The rules shall also prescribe required familiarization trips before a newly licensed pilot may pilot a larger or different type of vessel. Such rules shall be for the first five-year period in which pilots are actually

employed. [1991 c 200 § 1003; 1987 c 264 § 3; 1977 ex.s. c 337 § 10.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Severability—1977 ex.s. c 337: See note following RCW 88.16.005.

88.16.110 Pilots to file quarterly report—Contents. (1) Every pilot licensed under this chapter shall file with the board not later than the tenth day of January, April, July and October of each year a report for the preceding quarter. Said report shall contain an account of all moneys received for pilotage by him or her or by any other person for the pilot or on the pilot's account or for his or her benefit. Said report shall state the name of each vessel piloted, the amount charged to and/or collected from each vessel, the port of registry of such vessel, its dead weight tonnage, whether it was inward or outward bound, whether the amount so received, collected or charged is in full payment of pilotage and such other information as the board shall by regulation prescribe.

(2) The report shall include information for each vessel that suffers a grounding, collision, or other major marine casualty that occurred while the pilot was on duty during the reporting period. The report shall also include information on near miss incidents as defined in RCW 88.46.100. Information concerning near miss incidents provided pursuant to this section shall not be used for imposing any sanctions or penalties. The board shall forward information provided under this subsection to the office of marine safety for inclusion in the collision reporting system established under RCW 88.46.100. [1991 c 200 § 1004; 1935 c 18 § 7; RRS § 9871–7. Prior: 1888 p 178 § 22.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

88.16.170 Oil tankers—Intent and purpose. Because of the danger of spills, the legislature finds that the transportation of crude oil and refined petroleum products by tankers on the Columbia river and on Puget Sound and adjacent waters creates a great potential hazard to important natural resources of the state and to jobs and incomes dependent on these resources.

The legislature recognizes that the Columbia river has many natural obstacles to navigation and shifting navigation channels that create the risk of an oil spill. The legislature also recognizes Puget Sound and adjacent waters are a relatively confined salt water environment with irregular shorelines and therefore there is a greater than usual likelihood of long-term damage from any large oil spill.

The legislature further recognizes that certain areas of the Columbia river and Puget Sound and adjacent waters have limited space for maneuvering a large oil tanker and that these waters contain many natural navigational obstacles as well as a high density of commercial and pleasure boat traffic.

For these reasons, it is important that large oil tankers be piloted by highly skilled persons who are familiar

with local waters and that such tankers have sufficient capability for rapid maneuvering responses.

It is therefore the intent and purpose of RCW 88.16.180 and 88.16.190 to decrease the likelihood of oil spills on the Columbia river and on Puget Sound and its shorelines by requiring all oil tankers above a certain size to employ licensed pilots and to be escorted by a tug or tugs while navigating on certain areas of Puget Sound and adjacent waters. [1991 c 200 § 601; 1975 1st ex.s. c 125 § 1.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Severability—1975 1st ex.s. c 125: "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 1st ex.s. c 125 § 6.]

Study authorized and directed: "The House and Senate Transportation and Utilities Committees are authorized and directed to study the feasibility, benefits, and disadvantages of requiring similar pilot and tug assistance for vessels carrying other potentially hazardous materials and to submit their findings and recommendations prior to the 45th session of the Washington legislature in January, 1977. Such study shall also include a report on the feasibility, benefits and disadvantages of requiring vessels under tug escort to observe a speed limit, and such study shall include a discussion of the impact of a speed limit on the maneuverability of the vessel, the effectiveness of the tug escort and other legal and technical considerations material and relevant to the required study. Such study shall also include an evaluation and recommendations as to whether there should be a transfer of all duties and responsibilities of the board of pilotage commissioners to the Washington utilities and transportation commission or other state agency, and alternate methods for establishing fair and equitable rates for tug escort and pilot transfer." [1975 1st ex.s. c 125 § 5.]

Discharge of oil and hazardous substances into state waters: RCW 90.56.010 through 90.56.040.

88.16.180 Oil tankers—State licensed pilot required. Notwithstanding the provisions of RCW 88.16.070, any registered oil tanker of five thousand gross tons or greater, shall be required:

(1) To take a Washington state licensed pilot while navigating Puget Sound and adjacent waters and shall be liable for and pay pilotage rates pursuant to RCW 88.16.035; and

(2) To take a licensed pilot while navigating the Columbia river. [1991 c 200 § 602; 1983 c 3 § 231; 1975 1st ex.s. c 125 § 2.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Severability—1975 1st ex.s. c 125: See notes following RCW 88.16.170.

88.16.195 Oil tankers—Not to exceed speed of escorting tug. An oil tanker under escort of a tug or tugs pursuant to the provisions of RCW 88.16.190 shall not exceed the service speed of the tug or tugs that are escorting the oil tanker. [1990 c 116 § 26.]

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

88.16.200 Vessel designed to carry liquefied natural or propane gas to adhere to oil tanker provisions. Any vessel designed for the purpose of carrying as its cargo

liquefied natural or propane gas shall adhere to the provisions of RCW 88.16.190(2) as though it were an oil tanker. [1991 c 200 § 603; 1977 ex.s. c 337 § 16.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Severability—1977 ex.s. c 337: See note following RCW 88.16.005.

88.16.210 Reckless operation of a tank vessel—Penalty. (1) A person commits the crime of reckless operation of a tank vessel if, while (a) navigating a tank vessel, (b) piloting a tank vessel, or (c) on the vessel control bridge and in control of the motion, direction, or speed of a tank vessel, the person, with recklessness as defined in RCW 9A.08.010, causes a release of oil.

(2) Reckless operation of a tank vessel is a class C felony under chapter 9A.20 RCW. [1991 c 200 § 604.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

88.16.220 Operation of a vessel while under influence of liquor or drugs—Penalty. (1) A person is guilty of operating a vessel while under the influence of intoxicating liquor or drugs if the person operates a covered vessel within this state while:

(a) The person has 0.06 grams or more of alcohol per two hundred ten liters of breath, as shown by analysis of the person's breath made under RCW 88.16.230; or

(b) The person has 0.06 percent or more by weight of alcohol in the person's blood as shown by analysis of the person's blood made under RCW 88.16.230; or

(c) The person is under the influence of or affected by intoxicating liquor or drugs; or

(d) The person is under the combined influence of or affected by intoxicating liquor or drugs.

(2) The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section.

(3) Operating a vessel while intoxicated is a class C felony under chapter 9A.20 RCW. [1991 c 200 § 605.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

88.16.230 Breath or blood analysis. (1) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by a person while operating a vessel while under the influence of intoxicating liquor or drugs, if the amount of alcohol in the person's blood or breath at the time alleged as shown by analysis of his blood or breath is less than 0.06 percent by weight of alcohol in his blood or 0.06 grams of alcohol per two hundred ten liters of the person's breath, it is evidence that may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor or drugs.

(2) The breath analysis shall be based upon grams of alcohol per two hundred ten liters of breath. The foregoing provisions of this section shall not be construed as

limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor or any drug.

(3) Analysis of the person's blood or breath to be considered valid under this section shall have been performed according to methods approved by the state toxicologist and by an individual possessing a valid permit issued by the state toxicologist for this purpose. The state toxicologist shall approve satisfactory techniques or methods, to supervise the examination of individuals to ascertain their qualifications and competence to conduct such analyses, and to issue permits that are subject to termination or revocation at the discretion of the state toxicologist.

(4) If a blood test is administered under this section, the withdrawal of blood for the purpose of determining its alcoholic content may be performed only by a physician, a registered nurse, or a qualified technician. This limitation shall not apply to the taking of breath specimens.

(5) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his or her own choosing administer one or more tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

(6) Upon the request of the person who submits to a test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to the person or his or her attorney. [1991 c 200 § 606.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

88.16.240 Limited immunity for blood withdrawal. No physician, registered nurse, qualified technician, or hospital, or duly licensed clinical laboratory employing or using services of the physician, registered nurse, or qualified technician, may incur any civil or criminal liability as a result of the act of withdrawing blood from any person when directed by a law enforcement officer to do so for the purpose of a blood test under RCW 88.16.230. This section shall not relieve any physician, registered nurse, qualified technician, or hospital or duly licensed clinical laboratory from civil liability arising from the use of improper procedures or failing to exercise the required standard of care. [1991 c 200 § 607.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Chapter 88.32

RIVER AND HARBOR IMPROVEMENTS

Sections

88.32.230 Joint aid river and harbor improvements—Bonds—Election.

88.32.230 Joint aid river and harbor improvements—Bonds—Election. Whenever the county legislative authority of any county with a population of one hundred twenty-five thousand or more deems it for the interest of the county to engage in or to aid the United States of America, the state of Washington, or any adjoining county or any city of this state, or any of them, in construction, enlargement, improvement, modification, repair or operation of any harbor, canal, waterway, river channel, slip, dock, wharf, or other public improvement, or any of the same, for the purposes of commerce, navigation, sanitation and drainage, or any thereof, or to acquire or operate wharf sites, dock sites, or other properties, rights or interests, or any thereof, necessary or proper to be acquired or operated for public enjoyment of any such public improvement, and to incur indebtedness to meet the cost thereof and expenses connected therewith, and issue bonds of the county for the payment of such indebtedness, or any thereof, such county is hereby authorized and empowered, by and through its county legislative authority, to engage in or aid in any such public work or works, operation or acquisition, as aforesaid, and to incur indebtedness for such purpose or purposes to an amount, which, together with the then existing indebtedness of such county, shall not exceed two and one-half percent of the value of the taxable property in said county, as the term "value of the taxable property" is defined in RCW 39.36.015, and to issue the negotiable bonds of the county for all or any of such indebtedness and for the payment thereof, in the manner and form and as provided in chapter 39.46 RCW, and other laws of this state which shall then be in force, and to make part or all of such payment in bonds or in moneys derived from sale or sales thereof, or partly in such bonds and partly in such money: **PROVIDED**, That the county legislative authority shall have first submitted the question of incurring such indebtedness to the voters of the county at a general or special election, and three-fifths of the voters voting upon the question shall have voted in favor of incurring the same. [1991 c 363 § 161; 1970 ex.s. c 42 § 37; 1911 c 3 § 1; RRS § 9666. FORMER PART OF SECTION: 1911 c 3 § 2 now codified as RCW 88.32.235.]

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

Severability—Effective date—1970 ex.s. c 42: See notes following RCW 39.36.015.

Bonds, generally as to form, etc.: Chapter 39.44 RCW.

Chapter 88.40

TRANSPORT OF PETROLEUM PRODUCTS— FINANCIAL RESPONSIBILITY

Sections

88.40.005	Intent.
88.40.010	Repealed.
88.40.011	Definitions.
88.40.020	Evidence of financial responsibility for vessels.
88.40.025	Evidence of financial responsibility for onshore or offshore facilities.

88.40.030	Establishing evidence of financial responsibility—Documentation.
88.40.040	Failure to meet requirements—Denial of entry to state waters—Suspension of operation.
88.40.050	Repealed.

88.40.005 Intent. The legislature recognizes that oil and hazardous substance spills and other forms of incremental pollution present serious danger to the fragile marine environment of Washington state. It is the intent and purpose of this chapter to define and prescribe financial responsibility requirements for vessels that transport petroleum products as cargo or as fuel across the waters of the state of Washington and for facilities that store, handle, or transfer oil or hazardous substances in bulk on or near the navigable waters. [1991 c 200 § 701; 1990 c 116 § 29; 1989 1st ex.s. c 2 § 1.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

88.40.010 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

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

(1) "Administrator" means the administrator of the office of marine safety created in RCW 43.211.010.

(2) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, of greater than three hundred gross tons, including but not limited to, commercial fish processing vessels and freighters.

(3) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(4) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(5) "Department" means the department of ecology.

(6) "Director" means the director of the department of ecology.

(7)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; or (v) a marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(8) "Hazardous substances" means any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499. The following are not hazardous substances for purposes of this chapter:

(a) Wastes listed as F001 through F028 in Table 302.4; and

(b) Wastes listed as K001 through K136 in Table 302.4.

(9) "Inland barge" means any barge operating on the waters of the state and certified by the coast guard as an inland barge.

(10) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(11) "Office" means the office of marine safety established by RCW 43.211.010.

(12) "Oil" or "oils" means any naturally occurring liquid hydrocarbons at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline, and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(13) "Offshore facility" means any facility, as defined in subsection (7) of this section, located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land.

(14) "Onshore facility" means any facility, as defined in subsection (7) of this section, any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(15)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(16) "Passenger vessel" means a ship of greater than three hundred or more gross tons or five hundred or more international gross tons carrying passengers for compensation.

(17) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(18) "Spill" means an unauthorized discharge of oil into the waters of the state.

(19) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(20) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington. [1991 c 200 § 702.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

88.40.020 Evidence of financial responsibility for vessels. (1) Any inland barge that transports hazardous substances in bulk as cargo, using any port or place in the state of Washington or the navigable waters of the state shall establish evidence of financial responsibility in the amount of the greater of one million dollars, or one hundred fifty dollars per gross ton of such vessel.

(2)(a) Except as provided in (c) of this subsection, a tank vessel that carries oil as cargo in bulk shall demonstrate financial responsibility to pay at least five hundred million dollars.

(b) The administrator by rule may establish a lesser standard of financial responsibility for barges of three hundred gross tons or less. The standard shall set the level of financial responsibility based on the quantity of cargo the barge is capable of carrying. The administrator shall not set the standard for barges of three thousand gross tons or less below that required under federal law.

(c) The owner or operator of a tank vessel who is a member of an international protection and indemnity mutual organization and is covered for oil pollution risks up to the amounts required under this section is not required to demonstrate financial responsibility under this chapter.

(3) A cargo vessel or passenger vessel that carries oil as fuel shall demonstrate financial responsibility to pay the greater of at least six hundred dollars per gross ton or five hundred thousand dollars.

(4) The documentation of financial responsibility shall demonstrate the ability of the document holder to meet state and federal financial liability requirements for the actual costs for removal of oil spills, for natural resource damages, and necessary expenses.

(5) The office may by rule set a lesser amount of financial responsibility for a tank vessel that meets standards for construction, propulsion, equipment, and personnel established by the office. The office shall require as a minimum level of financial responsibility under this subsection the same level of financial responsibility required under federal law.

(6) This section shall not apply to a covered vessel owned or operated by the federal government or by a state or local government. [1991 c 200 § 703; 1990 c 116 § 31; 1989 1st ex.s. c 2 § 3.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

88.40.025 Evidence of financial responsibility for on-shore or offshore facilities. An onshore or offshore facility shall demonstrate financial responsibility in an amount determined by the department as necessary to compensate the state and affected counties and cities for damages that might occur during a reasonable worst case spill of oil from that facility into the navigable waters of the state. The department shall consider such matters as the amount of oil that could be spilled into the navigable waters from the facility, the cost of cleaning up the spilled oil, the frequency of operations at the facility, the damages that could result from the spill and the commercial availability and affordability of financial responsibility. This section shall not apply to an onshore or offshore facility owned or operated by the federal government or by the state or local government. [1991 c 200 § 704.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

88.40.030 Establishing evidence of financial responsibility—Documentation. Financial responsibility required by this chapter may be established by any one of, or a combination of, the following methods acceptable to the office of marine safety or the department of ecology: (1) Evidence of insurance; (2) surety bonds; (3) qualification as a self-insurer; or (4) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States. Documentation of such financial responsibility shall be kept on any covered vessel and filed with the office at least twenty-four hours before entry of the vessel into the navigable waters of the state. A covered vessel is not required to file documentation of financial responsibility twenty-four hours before entry of the vessel into the navigable waters of the state, if the vessel has filed documentation of financial responsibility with the federal government, and the level of financial responsibility required by the federal government is the same as or exceeds state requirements. The owner or operator of the vessel may file with the office a certificate evidencing compliance with the requirements of another state's or federal financial responsibility requirements if the state or federal government requires a level of financial responsibility the same as or greater than that required under this chapter. [1991 c 200 § 705; 1990 c 116 § 32; 1989 1st ex.s. c 2 § 4.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

88.40.040 Failure to meet requirements—Denial of entry to state waters—Suspension of operation. (1) The office shall deny entry to the waters of the state to any vessel that does not meet the financial responsibility requirements of this chapter. Any vessel owner or operator that does not meet the financial responsibility requirements of this chapter and any rules prescribed thereunder or the federal oil pollution act of 1990 shall be reported by the office to the United States coast guard.

(2) The office shall enforce section 1016 of the federal oil pollution act of 1990 as authorized by section 1019 of the federal act.

(3) Any onshore or offshore facility owner or operator who does not meet the financial responsibility requirements of RCW 88.40.025 and any rules adopted by the department or office shall be reported to the secretary of state. The secretary of state shall suspend the facility's privilege of operating in this state until financial responsibility is demonstrated. [1991 c 200 § 706; 1989 1st ex.s. c 2 § 5.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

88.40.050 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 88.44

OIL SPILL FIRST RESPONSE

Sections	
88.44.005	Purpose.
88.44.010	Definitions.
88.44.020	Commission—Powers and duties.
88.44.030	Members—Meetings.
88.44.040	Terms—Vacancies.
88.44.050	through 88.44.070 Repealed.
88.44.080	Quorum—Compensation—Travel expenses.
88.44.090	Commission records as evidence.
88.44.100	Assessments.
88.44.110	Increase in assessments.
88.44.120	Collection—Lien.
88.44.130	Records of vessel transits.
88.44.140	Right to subpoena.
88.44.150	Manager—Secretary and/or treasurer—Treasurer's bond.
88.44.160	Rules.
88.44.170	Enforcement.
88.44.180	Claims enforceable against commission assets—Non-liability of other persons and entities.
88.44.190	Penalty.
88.44.200	Financing assistance for commission.
88.44.210	Bonds or loans issued only after certification of sufficiency of funds.
88.44.220	Captions not law.
88.44.900	Severability—1990 c 117.
88.44.901	Effective dates—1990 c 117.

88.44.005 Purpose. The natural waters of Washington state hold a dual purpose. First, Washington state's waters are one of the most abundantly alive water bodies in the world. The amount of biota, diversity of species, and unique character of habitat makes these waters a natural wonder. Second, these

same waters provide one of the most vital maritime trade links for our state, our nation, and for the Pacific Rim.

The future of Washington's waters lies in both purposes. But, at times in the past, maritime accidents have occurred from oil spills which have endangered this unique environment. While some of the commercial vessels which carry petroleum on the water have, already, voluntarily joined organizations to provide immediate oil spill response, not all vessels are so protected.

All commercial vessels which enter Washington waters must have the protection of an oil spill response system. This is a responsibility of the maritime industry and must be taken care of by that industry. Therefore, this chapter creates the Washington state maritime commission to establish an oil spill first response system and carry out the purposes of this chapter to protect the waters of Washington state. [1990 c 117 § 1.]

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

(1) "Administrator" means the administrator of the office of marine safety created by RCW 43.211.010.

(2) "Business class" means a recognized trade segment of the maritime industry.

(3) "Commission" means the Washington state maritime commission.

(4) "Fishing vessel" means a vessel (a) on which persons commercially engage in: (i) Catching, taking, or harvesting fish; (ii) preparing fish or fish products; or (b) that supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish.

(5) "Foreign vessel" means a vessel of foreign registry or operated under the authority of a country, except the United States.

(6) "Oil" or "oils" means oil, including gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse, liquid natural gas, propane, butane, oils distilled from coal, and other liquid hydrocarbons regardless of specific gravity, or any other petroleum related products.

(7) "Oceanographic research vessel" means a vessel that is employed only in instruction in oceanography or limnology, or both, or only in oceanographic or limnological research, including those studies about the sea such as seismic, gravity meter, and magnetic exploration and other marine geophysical or geological surveys, atmospheric research, and biological research.

(8) "Protection and indemnity club" means a mutual insurance organization formed by a group of shipowners or operators in order to secure cover for various risks of vessel operation, including oil spill costs, not covered by normal hull insurance.

(9) "Public vessel" means a vessel that is owned, or chartered and operated by the United States government, by a state of the United States, or a government of a foreign country and is not engaged in commercial service.

(10) "State" means a state of the United States, Guam, Puerto Rico, the Virgin Islands, American

Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States.

(11) "Steamship agent or agency" means an agent or agency appointed by a vessel owner or operator to enter or clear vessels at ports within the state of Washington and to conduct onshore activities, or contract on behalf of the owner or operator for whatever is required for the efficient operation of the vessel.

(12) "Steamship liner company" means a steamship company maintaining a regular schedule of calls at designated ports of the state of Washington.

(13) "Towboat" means a commercial vessel engaged in, or intending to engage in, the service of pulling, pushing, or hauling along side, or any combination of pulling, pushing, or hauling along side.

(14) "United States flag vessel" means a vessel documented under the laws of the United States or registered under the laws of any state of the United States.

(15) "Vessel" means every description of watercraft, other than a seaplane on water, used or capable of being used as a means of transportation on water, carrying oil as fuel or cargo, and over three hundred gross registered tons, except oceanographic research vessels, public vessels, vessels being employed exclusively for pleasure, or vessels which, prior to entering Washington waters, have formerly arranged with an officially recognized cleanup cooperative or with a private cleanup contractor for immediate oil spill response.

(16) "Vessel owner or operator" means the legal owner of a vessel and/or the charterer or other person in charge of the day-to-day operation.

(17) "Waters of this state" or "waters of the state of Washington" has the meaning in RCW 90.56.010. [1991 c 200 § 901; 1990 c 117 § 2.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

88.44.020 Commission—Powers and duties. There is created the Washington state maritime commission to be known and designated and declared a corporate body. The powers and duties of the commission shall include the following:

(1) To adopt, rescind, and amend rules and orders for the exercise of its powers, which shall have the force and effect of the law when not inconsistent with existing laws;

(2) To administer and enforce the provisions of this chapter, and do all things reasonably necessary to effectuate the purposes of this chapter;

(3) To employ, and at its pleasure discharge, a manager, secretary, agents, attorneys, consultants, companies, organizations, and employees as it deems necessary, and to prescribe their duties and powers and fix their compensation;

(4) To establish offices, incur expenses, enter into contracts, and create such liabilities as may be reasonable for the proper administration and enforcement of this chapter;

(5) To assess vessels transiting the waters of this state, to collect such assessments, investigate violations, and

enforce the provisions of this chapter, except for vessels which transit upon the portion of the Columbia river that runs between the states of Washington and Oregon;

(6) To keep accurate record of all of its dealings, which shall be open to inspection and audit by the state auditor;

(7) To sue and be sued, adopt a corporate seal, and have all of the powers of a corporation;

(8) To expend funds for commission-related education and training programs as the commission deems appropriate;

(9) To borrow money and incur indebtedness;

(10) To establish an oil spill first response system, except for vessels which transit upon the portion of the Columbia river that runs between the states of Washington and Oregon. This system will provide a mandatory emergency response communications network for vessels involved in commerce in Washington waters, and provide an immediate response to such vessels which, for whatever reason, discharge oil into the state's waters. In the event of an oil spill or threatened oil spill, the system must be able to provide a complete response for the first twenty-four hours after the initial report, which may include, but not be limited to, as needed, response vessel or vessels, boom equipment, skimmers, qualified personnel, and wildlife care centers.

The commission may establish, by or before July 1, 1992, an oil spill first response system for vessels which transit upon the portion of the Columbia river that runs between the states of Washington and Oregon;

(11) To enter into contracts with cleanup contractors to provide spill response, or with other organizations or companies for communication services;

(12) To recover oil spill first response system costs from a responsible vessel owner or operator in the event of a spill or threatened release;

(13) To hold response readiness drills with state and federal agencies;

(14) To work with other states' and countries' maritime organizations, cleanup cooperatives, and governmental response agencies;

(15) To develop an oil spill contingency plan to comply with state statutes and rules for those vessels covered by the commission, except for vessels operating on the portion of the Columbia river that runs between the states of Washington and Oregon. The commission shall develop an oil spill contingency plan for vessels which transit upon the portion of the Columbia river that runs between the states of Washington and Oregon, not later than January 1, 1993;

(16) To develop a data base from existing information sources, of accidents, groundings, near misses, and oil discharges of all cargo and passenger vessels entering the waters of the state and to report any such information to the office of marine safety for the purposes of preparing a summary of accidents and near miss incidents; and

(17) To report annually to the governor, the office of marine safety, and the appropriate standing committees of the legislature on the commission's work and the

number of incidents to which the commission's first response system has responded, and make recommendations to improve the safety of maritime transportation. [1991 c 200 § 902; 1990 c 117 § 3.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

88.44.030 Members—Meetings. The commission shall be comprised of nine voting members. Seven persons shall be appointed by the governor to represent specific business classes. Two of the members shall represent steamship liner companies, one American flag and one foreign flag. One member shall represent towboat companies. One member shall represent fishing vessels. One member shall represent steamship agencies serving tramp vessels. One member shall represent protection and indemnity clubs or other marine brokers or insurers of oil spill cleanup costs for vessels operating in Washington waters. One member shall represent steamship agencies serving tramp vessels on the Columbia river. The governor shall also appoint one member with maritime, marine labor, or marine spill cleanup experience and one member from the environmental community with marine experience. In addition, the administrator and a state pilot licensed under chapter 88.16 RCW who pilots in the waters of the state of Washington, or their designees, will serve as nonvoting members. The United States coast guard captain of the port for Puget Sound and the United States coast guard captain of the port for that portion of the Columbia river that runs between Washington and Oregon shall be invited to attend meetings of the commission. The state-licensed pilot shall be selected by the Washington state board of pilotage commissioners.

Members of the commission must have had a minimum of five years' experience in their business class and be actively employed by or on behalf of a company within the business class for whom they shall represent. However, the protection and indemnity or insurance member may be a designee of the international group of protection and indemnity clubs, or any such marine insurers engaged in business within the state.

The commission shall meet at least twice each year. [1991 c 200 § 903; 1990 c 117 § 4.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

88.44.040 Terms—Vacancies. The governor shall appoint members of the commission for three-year terms. The governor shall appoint the chairperson. The members of the commission elected before May 15, 1991, shall continue as members until their terms would have expired under section 5, chapter 117, Laws of 1990.

The respective terms shall end on June 30 of each third year thereafter. Any vacancies that occur on the commission shall be filled by the governor to serve out the remainder of the unexpired term. [1991 c 200 § 904; 1990 c 117 § 5.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

88.44.050 through 88.44.070 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

88.44.080 Quorum—Compensation—Travel expenses. A majority of the voting members of the commission shall constitute a quorum for the transaction of all business and the carrying out of the duties of the commission.

Each member of the commission shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter. Employees of the commission may also be reimbursed for actual travel expenses when out-of-state on official commission business. Compensation and reimbursement shall be from commission funds only. [1991 c 200 § 905; 1990 c 117 § 9.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

88.44.090 Commission records as evidence. Copies of the proceedings, records, and acts of the commission, when certified by the secretary and authenticated by the corporate seal, shall be admissible in any court as prima facie evidence of the truth of the statements contained therein. [1990 c 117 § 10.]

88.44.100 Assessments. There is levied on and after October 1, 1990, an assessment upon all vessels, or the owners or operators thereof, which transit upon waters of this state, except as exempted herein and not including vessels which transit upon the portion of the Columbia river that runs between the states of Washington and Oregon, an assessment to be set by the commission on each vessel transit, plus annual increases as are imposed pursuant to the provisions of RCW 88.44.110. Vessels which show proof to the commission or the department of ecology that they have previously and individually arranged with an officially recognized cleanup cooperative or with a private cleanup contractor to provide immediate response capabilities in the event of an oil spill or threatened release, are exempt from assessment under this chapter. Of those vessels assessed, the commission may set the rate. When the fund reaches one million five hundred thousand dollars, the commission shall discontinue the assessment until the fund declines to one million dollars, at which time the assessment must be reinstated. The assessment, at a minimum, must be able to generate the maximum fund level within four years. All moneys collected hereunder shall be expended to effectuate the purpose and objects of this chapter.

There may be levied on and after January 1, 1992, an assessment upon all vessels, or the owners or operators thereof, which transit upon the portion of the Columbia river that runs between the states of Washington and Oregon. [1990 c 117 § 11.]

88.44.110 Increase in assessments. If it appears from investigation by the commission that the revenue from

the assessment levied on vessels under this chapter is inadequate to accomplish the purposes of this chapter, the commission by rule shall increase the assessment to a sum determined by the commission to be necessary for those purposes. The rule adopting the increase shall be filed with the administrator. An increase shall not take effect earlier than ninety days after the rule is adopted and filed with the administrator, unless the administrator determines that the increase is not justified. [1991 c 200 § 906; 1990 c 117 § 12.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

88.44.120 Collection—Lien. The commission shall, by rule, prescribe the method of collection for the assessment or recovery of oil spill first response system costs. If a vessel owner or operator fails to remit any assessments or recovery costs, the sum shall, in addition to penalties provided in this chapter, be a lien on the responsible vessel, which lien shall be enforced in accordance with applicable law. [1990 c 117 § 13.]

88.44.130 Records of vessel transits. Each vessel owner, operator, or agent shall keep a complete and accurate record of all vessel transits. This record shall be in such form and contain such information as the commission may by rule prescribe, and shall be preserved for a period of two years, and be subject to inspection at any time upon demand of the commission or its agents. [1990 c 117 § 14.]

88.44.140 Right to subpoena. The commission shall have the right to subpoena the records of any vessel owner, operator, or agent for the purpose of enforcing this chapter and the collection of the assessment or recovery costs. [1990 c 117 § 15.]

88.44.150 Manager—Secretary and/or treasurer—Treasurer's bond. The commission shall elect a manager, who is not a member, and fix his or her compensation; and shall appoint a secretary and/or treasurer, who shall sign all vouchers and receipts for all moneys received by the commission. The treasurer shall file with the commission a fidelity bond in the sum of one hundred thousand dollars, executed by a surety company authorized to do business in the state, in favor of the commission, conditioned for the faithful performance of his or her duties and strict accounting of all funds to the commission.

All money received by the commission, or by any state official on behalf of the commission, from the assessment herein levied, shall be paid to the treasurer, deposited in banks, which are approved state depositories, retained in separate commission accounts as the commission may designate, and disbursed by order of the commission. None of the provisions of RCW 43.01.050 shall apply to money collected under this chapter. [1990 c 117 § 16.]

88.44.160 Rules. Rules and orders adopted by the commission shall be filed with the administrator and

shall become effective pursuant to the provisions of the administrative procedure act. [1991 c 200 § 907; 1990 c 117 § 17.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

88.44.170 Enforcement. Employees and agents of the commission shall be empowered to enforce this chapter. The superior courts are hereby vested with jurisdiction to enforce the provisions of this chapter and the rules of the commission issued under this chapter. [1990 c 117 § 18.]

88.44.180 Claims enforceable against commission assets—Nonliability of other persons and entities. Obligations incurred by the commission and any other liabilities or claims against the commission shall be enforced only against the assets of the commission, and no liability for the debts or actions of the commission exists against either the state of Washington or any subdivision or instrumentality thereof, or against any member, officer, employee, or agent of the commission in his or her individual or representative capacity. Except as otherwise provided in this chapter, neither the members of the commission, its officers, agents, nor employees nor the business entities by whom the members are regularly employed may be held individually responsible for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, save for their own individual acts of dishonesty or crime. [1990 c 117 § 19.]

88.44.190 Penalty. Any vessel, vessel owner, or operator who violates any provision of this chapter or rule of the commission shall be subject to a civil penalty not to exceed one thousand dollars. [1990 c 117 § 20.]

88.44.200 Financing assistance for commission. The legislature finds that, in order to permit the commission to accomplish more efficiently its important public purposes, as enumerated in RCW 88.44.020, the commission may issue bonds or obtain loans secured by commission funds derived from membership assessment. [1990 c 117 § 21.]

88.44.210 Bonds or loans issued only after certification of sufficiency of funds. The bonds or loans authorized by the commission shall be issued only after the treasurer of the commission has certified that the net proceeds of the bonds or loans together with all money to be made available by the commission for the purposes described in RCW 88.44.020, shall be sufficient for such purposes; and also that, based upon the treasurer's estimates of future income from assessments levied pursuant to RCW 88.44.100 and other sources, an adequate balance will be maintained in the commission's general fund to enable the commission to pay the costs of bond issuance and retirement or loan repayment, including interests and costs. [1990 c 117 § 22.]

88.44.220 Captions not law. Section headings as used in this chapter do not constitute any part of the law. [1990 c 117 § 23.]

88.44.900 Severability—1990 c 117. 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. [1990 c 117 § 24.]

88.44.901 Effective dates—1990 c 117. This chapter shall take effect July 1, 1990, except for RCW 88.44.020 (10), (12), (13), and (15) which shall take effect July 1, 1991; except as otherwise provided in RCW 88.44.020 (5), (10), and (15), and 88.44.100. [1990 c 117 § 25.]

Chapter 88.46

VESSEL OIL SPILL PREVENTION AND RESPONSE

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88.46.927	Collective bargaining agreements not altered. (Effective July 1, 1997.)

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

(1) "Administrator" means the administrator of the office of marine safety created in RCW 43.211.010.

(2) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that

provide the greatest degree of protection achievable. The administrator's determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering (a) the additional protection provided by the measures; (b) the technological achievability of the measures; and (c) the cost of the measures.

(3) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration (a) processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development, and (b) processes that are currently in use. In determining what is best achievable technology, the administrator shall consider the effectiveness, engineering feasibility, and commercial availability of the technology.

(4) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, of greater than three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

(5) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(6) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(7) "Department" means the department of ecology.

(8) "Director" means the director of the department of ecology.

(9) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(10)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; or (v) a marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(11) "Marine facility" means any facility used for tank vessel wharfage or anchorage, including any equipment used for the purpose of handling or transferring oil in bulk to or from a tank vessel.

(12) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(13) "Office" means the office of marine safety established by RCW 43.211.010.

(14) "Oil" or "oils" means any naturally occurring liquid hydrocarbons at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline, and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(15) "Offshore facility" means any facility, as defined in subsection (10) of this section, located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land. "Offshore facility" does not include a marine facility as defined in subsection (11) of this section.

(16) "Onshore facility" means any facility, as defined in subsection (10) of this section, any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(17)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(18) "Passenger vessel" means a ship of greater than three hundred or more gross tons or five hundred or more international gross tons carrying passengers for compensation.

(19) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(20) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(21) "Spill" means an unauthorized discharge of oil into the waters of the state.

(22) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(23) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(24) "Worst case spill" means: (a) In the case of a vessel, a spill of the entire cargo and fuel of the vessel complicated by adverse weather conditions; and (b) in the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions. [1991 c 200 § 414.]

88.46.020 Coordination with federal law. In carrying out the purposes of this chapter, including the adoption of rules for contingency plans, the administrator shall to the greatest extent practicable implement this chapter in a manner consistent with federal law. [1991 c 200 § 415.]

88.46.030 Tank vessel inspection programs. (1) All tank vessels entering the navigable waters of the state shall be subject to inspection to assure that they comply with all applicable federal and state standards.

(2) The office shall review the tank vessel inspection programs conducted by the United States coast guard and other federal agencies to determine if the programs as actually operated by those agencies provide the best achievable protection to the waters of the state. If the office determines that the tank vessel inspection programs conducted by these agencies are not adequate to protect the state's waters, it shall adopt rules for a state tank vessel inspection program. The office shall adopt rules providing for a random review of individual tank vessel inspections conducted by federal agencies. The office may accept a tank vessel inspection report issued by another state if that state's tank vessel inspection program is determined by the office to be at least as protective of the public health and the environment as the program adopted by the office.

(3) The state tank vessel inspection program shall ensure that all tank vessels entering state waters are inspected at least annually. To the maximum extent feasible, the state program shall consist of the monitoring of existing tank vessel inspection programs conducted by the federal government. The office shall consult with the coast guard regarding the tank vessel inspection program. Any tank vessel inspection conducted pursuant to this section shall be performed during the vessel's scheduled stay in port.

(4) Any violation of coast guard or other federal regulations uncovered during a state tank vessel inspection shall be immediately reported to the appropriate agency. [1991 c 200 § 416.]

88.46.040 Prevention plans. (1) The owner or operator for each tank vessel shall prepare and submit to the office an oil spill prevention plan in conformance with the requirements of this chapter. The plans shall be submitted to the office in the time and manner directed by the office, but not later than January 1, 1993. The spill prevention plan may be consolidated with a spill contingency plan submitted pursuant to RCW 88.46.060. The office may accept plans prepared to comply with other state or federal law as spill prevention plans to the extent those plans comply with the requirements of this

chapter. The office, by rule, shall establish standards for spill prevention plans. The rules shall be adopted not later than July 1, 1992.

(2) The spill prevention plan for a tank vessel or a fleet of tank vessels operated by the same operator shall:

(a) Establish compliance with the federal oil pollution act of 1990 and state and federal financial responsibility requirements, if applicable;

(b) State all discharges of oil of more than twenty-five barrels from the vessel within the prior five years and what measures have been taken to prevent a reoccurrence;

(c) Describe all accidents, collisions, groundings, and near miss incidents in which the vessel has been involved in the prior five years, analyze the causes, and state the measures that have been taken to prevent a reoccurrence;

(d) Describe the vessel operations with respect to staffing standards;

(e) Describe the vessel inspection program carried out by the owner or operator of the vessel;

(f) Describe the training given to vessel crews with respect to spill prevention;

(g) Establish compliance with federal drug and alcohol programs;

(h) Describe all spill prevention technology that has been incorporated into the vessel;

(i) Describe the procedures used by the vessel owner or operator to ensure English language proficiency of at least one bridge officer while on duty in waters of the state;

(j) Describe relevant prevention measures incorporated in any applicable regional marine spill safety plan that have not been adopted and the reasons for that decision; and

(k) Include any other information reasonably necessary to carry out the purposes of this chapter required by rules adopted by the office.

(3) The office shall only approve a prevention plan if it provides the best achievable protection from damages caused by the discharge of oil into the waters of the state and if it determines that the plan meets the requirements of this section and rules adopted by the office.

(4) Upon approval of a prevention plan, the office shall provide to the person submitting the plan a statement indicating that the plan has been approved, the vessels covered by the plan, and other information the office determines should be included.

(5) The approval of a prevention plan shall be valid for five years. An owner or operator of a tank vessel shall notify the office in writing immediately of any significant change of which it is aware affecting its prevention plan, including changes in any factor set forth in this section or in rules adopted by the office. The office may require the owner or operator to update a prevention plan as a result of these changes.

(6) The office by rule shall require prevention plans to be reviewed, updated, if necessary, and resubmitted to the office at least once every five years.

(7) Approval of a prevention plan by the office does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under this chapter or other state law.

(8) This section does not authorize the office to modify the terms of a collective bargaining agreement. [1991 c 200 § 417.]

88.46.050 Vessel screening. (1) In order to ensure the safety of marine transportation within the navigable waters of the state and to protect the state's natural resources, the administrator shall adopt rules by July 1, 1992, for determining whether cargo vessels and passenger vessels entering the navigable waters of the state pose a substantial risk of harm to the public health and safety and the environment.

(2) The rules adopted by the administrator pursuant to this section may include, but are not limited to:

(a) Available information to examine for evidence that a cargo or passenger vessel may pose a substantial risk to safe marine transportation or the state's natural resources, including, vessel casualty lists, United States coast guard casualty reports, maritime insurance ratings, the index of contingency plans compiled by the department of ecology, other data gathered by the office or the maritime commission, or any other resources;

(b) A request to the United States coast guard to deny a cargo vessel or passenger vessel entry into the navigable waters of the state, if the vessel poses a substantial environmental risk;

(c) A notice to the state's spill response system that a cargo or passenger vessel entering the state's navigable waters poses a substantial environmental risk;

(d) A vessel inspection for vessels that may pose a substantial environmental risk, to determine whether a cargo vessel or passenger vessel complies with applicable state or federal laws. Any vessel inspection conducted pursuant to this section shall be performed during the vessel's scheduled stay in port; and

(e) Enforcement actions. [1991 c 200 § 418.]

88.46.060 Contingency plans. (1) Each covered vessel shall have a contingency plan for the containment and cleanup of oil spills from the covered vessel into the waters of the state and for the protection of fisheries and wildlife, natural resources, and public and private property from such spills. The office shall by rule adopt and periodically revise standards for the preparation of contingency plans. The office shall require contingency plans, at a minimum, to meet the following standards:

(a) Include full details of the method of response to spills of various sizes from any vessel which is covered by the plan;

(b) Be designed to be capable in terms of personnel, materials, and equipment, of promptly and properly, to the maximum extent practicable, as defined by the office[,] removing oil and minimizing any damage to the environment resulting from a worst case spill;

(c) Provide a clear, precise, and detailed description of how the plan relates to and is integrated into relevant

contingency plans which have been prepared by cooperatives, ports, regional entities, the state, and the federal government;

(d) Provide procedures for early detection of spills and timely notification of such spills to appropriate federal, state, and local authorities under applicable state and federal law;

(e) State the number, training preparedness, and fitness of all dedicated, prepositioned personnel assigned to direct and implement the plan;

(f) Incorporate periodic training and drill programs to evaluate whether personnel and equipment provided under the plan are in a state of operational readiness at all times;

(g) Describe important features of the surrounding environment, including fish and wildlife habitat, environmentally sensitive areas, and public facilities. The departments of ecology, fisheries, wildlife, and natural resources, upon request, shall provide information that they have available to assist in preparing this description;

(h) State the means of protecting and mitigating effects on the environment, including fish, marine mammals, and other wildlife, and ensure that implementation of the plan does not pose unacceptable risks to the public or the environment;

(i) Establish guidelines for the use of equipment by the crew of a vessel to minimize vessel damage, stop or reduce any spilling from the vessel, and, only when appropriate and only when vessel safety is assured, contain and clean up the spilled oil;

(j) Provide arrangements for the prepositioning of spill containment and cleanup equipment and trained personnel at strategic locations from which they can be deployed to the spill site to promptly and properly remove the spilled oil;

(k) Provide arrangements for enlisting the use of qualified and trained cleanup personnel to implement the plan;

(l) Provide for disposal of recovered spilled oil in accordance with local, state, and federal laws;

(m) Until a spill prevention plan has been submitted pursuant to RCW 88.46.040, state the measures that have been taken to reduce the likelihood that a spill will occur, including but not limited to, design and operation of a vessel, training of personnel, number of personnel, and backup systems designed to prevent a spill;

(n) State the amount and type of equipment available to respond to a spill, where the equipment is located, and the extent to which other contingency plans rely on the same equipment; and

(o) If the department of ecology has adopted rules permitting the use of dispersants, the circumstances, if any, and the manner for the application of the dispersants in conformance with the department's rules.

(2)(a) The owner or operator of a tank vessel of three thousand gross tons or more shall submit a contingency plan to the office within six months after the office adopts rules establishing standards for contingency plans under subsection (1) of this section.

(b) Contingency plans for all other covered vessels shall be submitted to the office within eighteen months after the office has adopted rules under subsection (1) of this section. The office may adopt a schedule for submission of plans within the eighteen-month period.

(3)(a) The owner or operator of a tank vessel or of the facilities at which the vessel will be unloading its cargo shall submit the contingency plan for the tank vessel. Subject to conditions imposed by the office, the owner or operator of a facility may submit a single contingency plan for tank vessels of a particular class that will be unloading cargo at the facility.

(b) The contingency plan for a cargo vessel or passenger vessel may be submitted by the owner or operator of the cargo vessel or passenger vessel, by the agent for the vessel resident in this state, or by the Washington state maritime commission pursuant to RCW 88.44.020. Subject to conditions imposed by the office, the owner, operator, or agent may submit a single contingency plan for cargo vessels or passenger vessels of a particular class.

(c) A person who has contracted with a covered vessel to provide containment and cleanup services and who meets the standards established pursuant to RCW 90.56.240, may submit the plan for any covered vessel for which the person is contractually obligated to provide services. Subject to conditions imposed by the office, the person may submit a single plan for more than one covered vessel.

(4) A contingency plan prepared for an agency of the federal government or another state that satisfies the requirements of this section and rules adopted by the office may be accepted by the office as a contingency plan under this section. The office shall assure that to the greatest extent possible, requirements for contingency plans under this section are consistent with the requirements for contingency plans under federal law.

(5) In reviewing the contingency plans required by this section, the office shall consider at least the following factors:

(a) The adequacy of containment and cleanup equipment, personnel, communications equipment, notification procedures and call down lists, response time, and logistical arrangements for coordination and implementation of response efforts to remove oil spills promptly and properly and to protect the environment;

(b) The nature and amount of vessel traffic within the area covered by the plan;

(c) The volume and type of oil being transported within the area covered by the plan;

(d) The existence of navigational hazards within the area covered by the plan;

(e) The history and circumstances surrounding prior spills of oil within the area covered by the plan;

(f) The sensitivity of fisheries and wildlife and other natural resources within the area covered by the plan;

(g) Relevant information on previous spills contained in on-scene coordinator reports prepared by the director; and

(h) The extent to which reasonable, cost-effective measures to prevent a likelihood that a spill will occur have been incorporated into the plan.

(6) The office shall approve a contingency plan only if it determines that the plan meets the requirements of this section and that, if implemented, the plan is capable, in terms of personnel, materials, and equipment, of removing oil promptly and properly and minimizing any damage to the environment.

(7) The approval of the contingency plan shall be valid for five years. Upon approval of a contingency plan, the office shall provide to the person submitting the plan a statement indicating that the plan has been approved, the vessels covered by the plan, and other information the office determines should be included.

(8) An owner or operator of a covered vessel shall notify the office in writing immediately of any significant change of which it is aware affecting its contingency plan, including changes in any factor set forth in this section or in rules adopted by the office. The office may require the owner or operator to update a contingency plan as a result of these changes.

(9) The office by rule shall require contingency plans to be reviewed, updated, if necessary, and resubmitted to the office at least once every five years.

(10) Approval of a contingency plan by the office does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under this chapter or other state law. [1991 c 200 § 419.]

88.46.070 Enforcement of prevention plans and contingency plans. The provisions of prevention plans and contingency plans approved by the office pursuant to this chapter shall be legally binding on those persons submitting them to the office and on their successors, assigns, agents, and employees. The superior court shall have jurisdiction to restrain a violation of, compel specific performance of, or otherwise to enforce such plans upon application by the office. The office may issue an order pursuant to chapter 34.05 RCW requiring compliance with a contingency plan or a prevention plan and may impose administrative penalties for failure to comply with a plan. [1991 c 200 § 420.]

88.46.080 Unlawful operation of a covered vessel—Penalties—Evidence of approved contingency plan or prevention plan. (1) Except as provided in subsection (2) of this section, it shall be unlawful for the owner or operator to knowingly and intentionally operate in this state or on the waters of this state a covered vessel without an approved contingency plan or an approved prevention plan as required by this chapter, or financial responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990. The first conviction under this section shall be a gross misdemeanor under chapter 9A.20 RCW. A second or subsequent conviction shall be a class C felony under chapter 9A.20 RCW.

(2) It shall not be unlawful for the owner or operator to operate a covered vessel if:

(a) The covered vessel is not required to have a contingency plan, spill prevention plan, or financial responsibility;

(b) All required plans have been submitted to the office as required by this chapter and rules adopted by the office and the office is reviewing the plan and has not denied approval; or

(c) The covered vessel has entered state waters after the United States coast guard has determined that the vessel is in distress.

(3) A person may rely on a copy of the statement issued by the office pursuant to RCW 88.46.060 as evidence that a vessel has an approved contingency plan and the statement issued pursuant to RCW 88.46.040 that a vessel has an approved prevention plan. [1991 c 200 § 421.]

88.46.090 Unlawful acts—Civil penalty. (1) Except as provided in subsection (4) of this section, it shall be unlawful for a covered vessel to enter the waters of the state without an approved contingency plan required by RCW 88.46.060, a spill prevention plan required by RCW 88.46.040, or financial responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990. The office may deny entry onto the waters of the state to any covered vessel that does not have a required contingency or spill prevention plan or financial responsibility.

(2) Except as provided in subsection (4) of this section, it shall be unlawful for a covered vessel to transfer oil to an onshore or offshore facility that does not have an approved contingency plan required under RCW 90.56.210, a spill prevention plan required by RCW 90.56.200, or financial responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990.

(3) The administrator may assess a civil penalty of up to one hundred thousand dollars against the owner or operator of a vessel who is in violation of this section. Each day that the owner or operator of a covered vessel is in violation of this section shall be considered a separate violation.

(4) It shall not be unlawful for a covered vessel to operate on the waters of the state if:

(a) A contingency plan, a prevention plan, or financial responsibility is not required for the covered vessel;

(b) A contingency plan and prevention plan has been submitted to the office as required by this chapter and rules adopted by the office and the office is reviewing the plan and has not denied approval; or

(c) The covered vessel has entered state waters after the United States coast guard has determined that the vessel is in distress.

(5) Any person may rely on a copy of the statement issued by the office to RCW 88.46.060 as evidence that the vessel has an approved contingency plan and the statement issued pursuant to RCW 88.46.040 as evidence that the vessel has an approved spill prevention plan. [1991 c 200 § 422.]

88.46.100 Notification of accidents and near miss incidents. (1) In order to assist the state in identifying areas of the navigable waters of the state needing special attention, the owner or operator of a covered vessel shall notify the coast guard within one hour:

(a) Of the disability of the covered vessel if the disabled vessel is within twelve miles of the shore of the state; and

(b) Of a collision or a near miss incident within twelve miles of the shore of the state.

(2) The division of emergency management of the department of community development and the office shall request the coast guard to notify the division of emergency management as soon as possible after the coast guard receives notice of a disabled covered vessel or of a collision or near miss incident within twelve miles of the shore of the state. The office shall negotiate an agreement with the coast guard governing procedures for coast guard notification to the state regarding disabled covered vessels and collisions and near miss incidents.

(3) The office shall prepare a summary of the information collected under this section and provide the summary to the regional marine safety committees, the coast guard, and others in order to identify problems with the marine transportation system.

(4) For the purposes of this section:

(a) A tank vessel or cargo vessel is considered disabled if any of the following occur:

(i) Any accidental or intentional grounding;

(ii) The total or partial failure of the main propulsion or primary steering or any component or control system that causes a reduction in the maneuvering capabilities of the vessel;

(iii) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service, including but not limited to, fire, flooding, or collision with another vessel;

(iv) Any other occurrence that creates the serious possibility of an oil spill or an occurrence that may result in such a spill.

(b) A barge is considered disabled if any of the following occur:

(i) The towing mechanism becomes disabled;

(ii) The towboat towing the barge becomes disabled through occurrences defined in (a) of this subsection.

(c) A near miss incident is an incident that requires the pilot or master of a covered vessel to take evasive actions or make significant course corrections in order to avoid a collision with another ship or to avoid a grounding as required by the international rules of the road.

(5) Failure of any person to make a report under this section shall not be used as the basis for the imposition of any fine or penalty. [1991 c 200 § 423.]

88.46.110 Regional marine safety committees—Regional marine safety plans—Reports and recommendations. (1) The office shall establish regional marine safety committees at least for the Strait of Juan de Fuca/Northern Puget Sound, Southern Puget Sound, and Grays Harbor/Pacific coast. It is the intent of the

legislature that the office also establish a regional marine safety committee jointly with the state of Oregon for the Columbia river. The office by rule shall establish the boundaries of the committees.

(2) The administrator shall appoint to each regional committee for a term of three years six persons representing a cross section of interests and the public with an interest in maritime transportation and environmental issues.

(3) The administrator or his or her designee shall chair each of the regional committees. Each member of the committee shall be reimbursed for actual and necessary expenses incurred in the performance of committee duties in accordance with RCW 43.03.250.

(4) Each regional committee shall be responsible for planning for the safe navigation and operation of tankers, barges, and other vessels within each region. Each committee shall prepare a regional marine safety plan, encompassing all vessel traffic within the region. The coast guard, the federal environmental protection agency, the army corps of engineers, and the navy shall be invited to attend the meetings of each marine regional safety committee.

(5) The administrator shall adopt rules and guidelines for regional marine safety plans in consultation with affected parties. The rules shall require the committees to establish subcommittees to involve all interested parties in the development of the plans and to require the committees to include a summary of public comments and any minority reports with recommendations submitted to the administrator. The rules shall also require the plans to consider all of the following:

(a) Requirements for tug escorts of tankers and other commercial vessels, and speed limits for tankers and other vessels in addition to the requirements imposed by statute;

(b) A review and evaluation of the adequacy of and any changes needed in:

(i) Anchorage designations and sounding checks;

(ii) Communications systems;

(iii) Commercial and recreational fishing, recreational boaters, and other small vessel congestion in shipping lanes; and

(iv) Placement and effectiveness of navigational aids, channel design plans, and the traffic and routings from port construction and dredging projects;

(c) Procedures for routing vessels during emergencies that impact navigation;

(d) Management requirements for control bridges;

(e) Special protection for environmentally sensitive areas;

(f) Suggested mechanisms to ensure that the provisions of the plan are fully and regularly enforced; and

(g) A recommendation as to whether establishing or expanding vessel traffic safety systems within the regions is desirable.

(6) Each regional marine safety plan shall be submitted to the office for approval within one year after the regional marine safety committee is established. The office shall review the plans for consistency with the rules

and guidelines and shall approve the plans or give reasons for their disapproval. If a regional marine safety committee does not submit a regional marine safety plan to the office within one year after the committee is established, the office, after consulting with affected interests, may adopt a plan for the region that meets the requirements of subsection (5) of this section.

(7) Upon approval of a plan, the office shall implement those elements of the plan over which the state has authority. If federal authority or action is required, the office shall petition the appropriate agency or congress.

(8) Not later than July 1st of each even-numbered year each regional marine safety committee shall report its findings and recommendations to the marine oversight board established in RCW 90.56.450 and the office concerning vessel traffic safety in its region and any recommendations for improving tanker, barge, and other vessel safety in the region by amending the regional marine safety plan. The regional committees shall also provide technical assistance to the marine oversight board.

(9) The regional safety committees shall recommend to the office the need for, and the structure and design of, an emergency response system for the Strait of Juan de Fuca and the Pacific coast. [1991 c 200 § 424.]

88.46.120 Tank vessel response equipment standards.

The office may adopt rules including but not limited to standards for spill response equipment to be maintained on tank vessels. The standards adopted under this section shall be consistent with spill response equipment standards adopted by the United States coast guard. [1991 c 200 § 425.]

88.46.130 Emergency response system. An emergency response system for the Strait of Juan de Fuca shall be established by July 1, 1992. In establishing the emergency response system, the administrator shall consider the recommendations of the regional marine safety committees. The administrator shall also consult with the province of British Columbia regarding its participation in the emergency response system. [1991 c 200 § 426.]

88.46.140 Unified and consistent planning. The office and the department shall adopt an interagency agreement in accordance with chapter 39.34 RCW to divide responsibilities for the regulation of marine facilities to ensure that no duplication of regulatory responsibilities occurs. [1991 c 200 § 428.]

88.46.150 Tow boat standards—Study. The regional marine safety committees established pursuant to RCW 88.46.110 shall study federal requirements for tow equipment for barges carrying oil in bulk. The committees shall review standards for: Wire rope specifications, catenary, the design of related on-board equipment, number of cables, back-up or barge retrieval systems in case of cable break, and the operation, maintenance, and inspection of cables and other tow equipment.

The committees shall submit their report to the office within one year after the committees are established.

The report shall include a recommendation on whether the office should adopt standards for tow equipment and its maintenance, operation, and inspection. If there is a recommendation that the office adopt standards, the recommended standards shall also be included in the report. [1991 c 200 § 437; 1990 c 116 § 16. Formerly RCW 90.48.385.]

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

88.46.160 Refueling, bunkering, or lightering operations—Availability of containment and recovery equipment. Any person or facility conducting ship refueling and bunkering operations, or the lightering of petroleum products, and any person or facility transferring oil between an onshore or offshore facility and a tank vessel shall have containment and recovery equipment readily available for deployment in the event of the discharge of oil into the waters of the state and shall deploy the containment and recovery equipment in accordance with standards adopted by the office. All persons conducting refueling, bunkering, or lightering operations, or oil transfer operations shall be trained in the use and deployment of oil spill containment and recovery equipment. The office shall adopt rules as necessary to carry out the provisions of this section. The rules shall include standards for the circumstances under which containment equipment should be deployed. An onshore or offshore facility shall include the procedures used to contain and recover discharges in the facility's contingency plan. It is the responsibility of the person providing bunkering, refueling, or lightering services to provide any containment or recovery equipment required under this section. This section does not apply to a person operating a ship for personal pleasure or for recreational purposes. [1991 c 200 § 438; 1987 c 479 § 2. Formerly RCW 90.48.510.]

88.46.900 Captions not law. Section headings as used in this chapter do not constitute any part of the law. [1991 c 200 § 427.]

88.46.901 Effective dates—Severability—1991 c 200. See RCW 90.56.901 and 90.56.904.

88.46.920 Report to the legislature. On or before November 15, 1996, the legislative budget committee shall prepare a report to the legislature on the means for future implementation of the provisions in chapter 88.46 RCW. [1991 c 200 § 429.]

88.46.921 Office of marine safety abolished. (Effective July 1, 1997.) The office of marine safety is hereby abolished and its powers, duties, and functions are hereby transferred to the department of ecology. All references to the administrator or office of marine safety in the Revised Code of Washington shall be construed to mean the director or department of ecology. [1991 c 200 § 430.]

Effective date—1991 c 200 §§ 430–436: "Sections 430 through 436 of this act shall take effect July 1, 1997." [1991 c 200 § 1120.]

88.46.922 Transfer of property and appropriations. (Effective July 1, 1997.) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the office of marine safety shall be delivered to the custody of the department of ecology. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the office of marine safety shall be made available to the department of ecology. All funds, credits, or other assets held by the office of marine safety shall be assigned to the department of ecology.

Any appropriations made to the office of marine safety shall, on July 1, 1997, be transferred and credited to the department of ecology.

Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned. [1991 c 200 § 431.]

Effective date—1991 c 200 §§ 430–436: See note following RCW 88.46.921.

88.46.923 Transfer of employees. (Effective July 1, 1997.) All employees of the office of marine safety are transferred to the jurisdiction of the department of ecology. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the department of ecology 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 state civil service. [1991 c 200 § 432.]

Effective date—1991 c 200 §§ 430–436: See note following RCW 88.46.921.

88.46.924 Continuation of rules, pending business, and obligations. (Effective July 1, 1997.) All rules and all pending business before the office of marine safety shall be continued and acted upon by the department of ecology. All existing contracts and obligations shall remain in full force and shall be performed by the department of ecology. [1991 c 200 § 433.]

Effective date—1991 c 200 §§ 430–436: See note following RCW 88.46.921.

88.46.925 Prior acts valid. (Effective July 1, 1997.) The transfer of the powers, duties, functions, and personnel of the office of marine safety shall not affect the validity of any act performed prior to July 1, 1997. [1991 c 200 § 434.]

Effective date—1991 c 200 §§ 430–436: See note following RCW 88.46.921.

88.46.926 Apportionments of budgeted funds. (Effective July 1, 1997.) If apportionments of budgeted funds are required because of the transfers directed by RCW 88.46.922 through 88.46.925, the director of financial management shall certify the apportionments to

the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification. [1991 c 200 § 435.]

Effective date—1991 c 200 §§ 430–436: See note following RCW 88.46.921.

88.46.927 Collective bargaining agreements not altered. (Effective July 1, 1997.) Nothing contained in RCW 88.46.921 through 88.46.926 may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the personnel board as provided by law. [1991 c 200 § 436.]

Effective date—1991 c 200 §§ 430–436: See note following RCW 88.46.921.

Title 90

WATER RIGHTS—ENVIRONMENT

Chapters

- 90.03 Water code—1917 act.
- 90.14 Water rights—Registration—Waiver and relinquishment, etc.
- 90.42 Water resource management.
- 90.48 Water pollution control.
- 90.50A Water pollution control facilities—Federal capitalization grants.
- 90.54 Water resources act of 1971.
- 90.56 Oil and hazardous substance spill prevention and response.
- 90.58 Shoreline management act of 1971.
- 90.62 Environmental coordination procedures act.
- 90.70 Puget Sound water quality authority.
- 90.76 Underground storage tanks.

Chapter 90.03

WATER CODE—1917 ACT

Sections

- 90.03.380 Right to water attaches to land—Transfer or change in point of diversion—Transfer of rights from one district to another.
- 90.03.383 Interties—Findings—Definitions—Review and approval.
- 90.03.386 Coordination of approval procedures for compliance and consistency with approved water system plan.
- 90.03.390 Temporary changes—Emergency interties—Rotation in use.

90.03.380 Right to water attaches to land—Transfer or change in point of diversion—Transfer of rights from one district to another. The right to the use of water which has been applied to a beneficial use in the state shall be and remain appurtenant to the land or place upon which the same is used: PROVIDED, HOWEVER, That said right may be transferred to another or to others and become appurtenant to any other

land or place of use without loss of priority of right theretofore established if such change can be made without detriment or injury to existing rights. The point of diversion of water for beneficial use or the purpose of use may be changed, if such change can be made without detriment or injury to existing rights. Before any transfer of such right to use water or change of the point of diversion of water or change of purpose of use can be made, any person having an interest in the transfer or change, shall file a written application therefor with the department, and said application shall not be granted until notice of said application shall be published as provided in RCW 90.03.280. If it shall appear that such transfer or such change may be made without injury or detriment to existing rights, the department shall issue to the applicant a certificate in duplicate granting the right for such transfer or for such change of point of diversion or of use. The certificate so issued shall be filed and be made a record with the department and the duplicate certificate issued to the applicant may be filed with the county auditor in like manner and with the same effect as provided in the original certificate or permit to divert water.

If an application for change proposes to transfer water rights from one irrigation district to another, the department shall, before publication of notice, receive concurrence from each of the irrigation districts that such transfer or change will not adversely affect the ability to deliver water to other landowners or impair the financial integrity of either of the districts.

A change in place of use by an individual water user or users of water provided by an irrigation district need only receive approval for the change from the board of directors of the district if the use of water continues within the irrigation district.

This section shall not apply to trust water rights acquired by the state through the funding of water conservation projects under chapter 90.38 RCW or RCW 90.42.010 through 90.42.070. [1991 c 347 § 15; 1987 c 109 § 94; 1929 c 122 § 6; 1917 c 117 § 39; RRS § 7391. Formerly RCW 90.28.090.]

Purposes—1991 c 347: See note following RCW 90.42.005.

Severability—1991 c 347: See RCW 90.42.900.

Purpose—**Short title**—**Construction**—**Rules**—**Severability**—**Captions**—1987 c 109: See notes following RCW 43.21B.001.

Application to Yakima river basin trust water rights: RCW 90.38.040.

90.03.383 Interties—Findings—Definitions—Review and approval. (1) The legislature recognizes the value of interties for improving the reliability of public water systems, enhancing their management, and more efficiently utilizing the increasingly limited resource. Given the continued growth in the most populous areas of the state, the increased complexity of public water supply management, and the trend toward regional planning and regional solutions to resource issues, interconnections of public water systems through interties provide a valuable tool to ensure reliable public water supplies for the citizens of the state. Public water systems have been encouraged in the past to utilize interties

to achieve public health and resource management objectives. The legislature finds that it is in the public interest to recognize interties existing and in use as of January 1, 1991, and to have associated water rights modified by the department of ecology to reflect current use of water through those interties, pursuant to subsection (3) of this section. The legislature further finds it in the public interest to develop a coordinated process to review proposals for interties commencing use after January 1, 1991.

(2) For the purposes of this section, the following definitions shall apply:

(a) "Interties" are interconnections between public water systems permitting exchange or delivery of water between those systems for other than emergency supply purposes, where such exchange or delivery is within established instantaneous and annual withdrawal rates specified in the systems' existing water right permits or certificates, or contained in claims filed pursuant to chapter 90.14 RCW, and which results in better management of public water supply consistent with existing rights and obligations. Interties include interconnections between public water systems permitting exchange or delivery of water to serve as primary or secondary sources of supply, but do not include development of new sources of supply to meet future demand.

(b) "Service area" is the area designated in a water system plan or a coordinated water system plan pursuant to chapter 43.20 or 70.116 RCW respectively. When a public water system does not have a designated service area subject to the approval process of those chapters, the service area shall be the designated place of use contained in the water right permit or certificate, or contained in the claim filed pursuant to chapter 90.14 RCW.

(3) Public water systems with interties existing and in use as of January 1, 1991, or that have received written approval from the department of health prior to that date, shall file written notice of those interties with the department of health and the department of ecology. The notice may be incorporated into the public water system's five-year update of its water system plan, but shall be filed no later than June 30, 1996. The notice shall identify the location of the intertie; the dates of its first use; the purpose, capacity, and current use; the intertie agreement of the parties and the service areas assigned; and other information reasonably necessary to modify the water right permit. Notwithstanding the provisions of RCW 90.03.380 and 90.44.100, for public water systems with interties existing and in use as of January 1, 1991, the department of ecology, upon receipt of notice meeting the requirements of this subsection, shall, as soon as practicable, modify the place of use descriptions in the water right permits, certificates, or claims to reflect the actual use through such interties, provided that the place of use is within service area designations established in a water system plan approved pursuant to chapter 43.20 RCW, or a coordinated water system plan approved pursuant to chapter 70.116 RCW, and further provided that the water used is within the instantaneous and annual withdrawal rates specified in

the water right permit and that no outstanding complaints of impairment to existing water rights have been filed with the department of ecology prior to September 1, 1991. Where such complaints of impairment have been received, the department of ecology shall make all reasonable efforts to resolve them in a timely manner through agreement of the parties or through available administrative remedies.

(4) Notwithstanding the provisions of RCW 90.03.380 and 90.44.100, exchange or delivery of water through interties commencing use after January 1, 1991, shall be permitted when the intertie improves overall system reliability, enhances the manageability of the systems, provides opportunities for conjunctive use, or delays or avoids the need to develop new water sources, and otherwise meets the requirements of this section, provided that each public water system's water use shall not exceed the instantaneous or annual withdrawal rate specified in its water right authorization, shall not adversely affect existing water rights, and shall not be inconsistent with state-approved plans such as water system plans or other plans which include specific proposals for construction of interties. Interties commencing use after January 1, 1991, shall not be inconsistent with regional water resource plans developed pursuant to chapter 90.54 RCW.

(5) For public water systems subject to the approval process of chapter 43.20 RCW or chapter 70.116 RCW, proposals for interties commencing use after January 1, 1991, shall be incorporated into water system plans pursuant to chapter 43.20 RCW or coordinated water system plans pursuant to chapter 70.116 RCW and submitted to the department of health and the department of ecology for review and approval as provided for in subsections (5) through (9) of this section. The plan shall state how the proposed intertie will improve overall system reliability, enhance the manageability of the systems, provide opportunities for conjunctive use, or delay or avoid the need to develop new water sources.

(6) The department of health shall be responsible for review and approval of proposals for new interties. In its review the department of health shall determine whether the intertie satisfies the criteria of subsection (4) of this section, with the exception of water rights considerations, which are the responsibility of the department of ecology, and shall determine whether the intertie is necessary to address emergent public health or safety concerns associated with public water supply.

(7) If the intertie is determined by the department of health to be necessary to address emergent public health or safety concerns associated with public water supply, the public water system shall amend its water system plan as required and shall file an application with the department of ecology to change its existing water right to reflect the proposed use of the water as described in the approved water system plan. The department of ecology shall process the application for change pursuant to RCW 90.03.380 or 90.44.100 as appropriate, except that, notwithstanding the requirements of those sections regarding notice and protest periods, applicants shall be required to publish notice one time, and the comment

period shall be fifteen days from the date of publication of the notice. Within sixty days of receiving the application, the department of ecology shall issue findings and advise the department of health if existing water rights are determined to be adversely affected. If no determination is provided by the department of ecology within the sixty-day period, the department of health shall proceed as if existing rights are not adversely affected by the proposed intertie. The department of ecology may obtain an extension of the sixty-day period by submitting written notice to the department of health and to the applicant indicating a definite date by which its determination will be made. No additional extensions shall be granted, and in no event shall the total review period for the department of ecology exceed one hundred eighty days.

(8) If the department of health determines the proposed intertie appears to meet the requirements of subsection (4) of this section but is not necessary to address emergent public health or safety concerns associated with public water supply, the department of health shall instruct the applicant to submit to the department of ecology an application for change to the underlying water right or claim as necessary to reflect the new place of use. The department of ecology shall consider the applications pursuant to the provisions of RCW 90.03.380 and 90.44.100 as appropriate. If in its review of proposed interties and associated water rights the department of ecology determines that additional information is required to act on the application, the department may request applicants to provide information necessary for its decision, consistent with agency rules and written guidelines. Parties disagreeing with the decision of the department of ecology on the application for change in place of use may appeal the decision to the pollution control hearings board.

(9) The department of health may approve plans containing intertie proposals prior to the department of ecology's decision on the water right application for change in place of use. However, notwithstanding such approval, construction work on the intertie shall not begin until the department of ecology issues the appropriate water right document to the applicant consistent with the approved plan. [1991 c 350 § 1.]

90.03.386 Coordination of approval procedures for compliance and consistency with approved water system plan. Within service areas established pursuant to chapters 43.20 and 70.116 RCW, the department of ecology and the department of health shall coordinate approval procedures to ensure compliance and consistency with the approved water system plan. [1991 c 350 § 2.]

90.03.390 Temporary changes—Emergency interties—Rotation in use. RCW 90.03.380 shall not be construed to prevent water users from making a seasonal or temporary change of point of diversion or place of use of water when such change can be made without detriment to existing rights, but in no case shall such change be made without the permission of the water master of the district in which such proposed change is

located, or of the department. Nor shall RCW 90.03.380 be construed to prevent construction of emergency interties between public water systems to permit exchange of water during short-term emergency situations, or rotation in the use of water for bringing about a more economical use of the available supply, provided however, that the department of health in consultation with the department of ecology shall adopt rules or develop written guidelines setting forth standards for determining when a short-term emergency exists and the circumstances in which emergency interties are permitted. The rules or guidelines shall be consistent with the procedures established in RCW 43.83B.400 through 43.83B.420. Water users owning lands to which water rights are attached may rotate in the use of water to which they are collectively entitled, or an individual water user having lands to which are attached water rights of a different priority, may in like manner rotate in use when such rotation can be made without detriment to other existing water rights, and has the approval of the water master or department. [1991 c 350 § 3; 1987 c 109 § 95; 1929 c 122 § 7; RRS § 7391a. Formerly RCW 90.28.100.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Chapter 90.14

WATER RIGHTS—REGISTRATION—WAIVER AND RELINQUISHMENT, ETC.

Sections
90.14.215 Chapter not applicable to trust water rights under chapter 90.38 or 90.42 RCW.

90.14.215 Chapter not applicable to trust water rights under chapter 90.38 or 90.42 RCW. This chapter shall not apply to trust water rights held or exercised by the department of ecology under chapter 90.38 or 90.42 RCW. [1991 c 347 § 14.]

Purposes—1991 c 347: See note following RCW 90.42.005.

Severability—1991 c 347: See RCW 90.42.900.

Chapter 90.42

WATER RESOURCE MANAGEMENT

Sections
90.42.005 Policy—Findings.
90.42.010 Purpose—Water resource inventory areas—Written evaluation and recommendations.
90.42.020 Definitions.
90.42.030 Contracts to finance water conservation projects—Public benefits—Trust water rights.
90.42.040 Trust water rights program—Water right certificate—Notice of creation or modification.
90.42.050 Guidelines governing trust water rights—Submission of guidelines to joint select committee.
90.42.060 Chapter 43.83B or 43.99E RCW not replaced or amended.
90.42.070 Involuntary impairment of existing water rights not authorized.

- 90.42.080 Trust water rights in pilot planning areas and in water resource inventory areas—Acquisition, exercise, and transfer—Appropriation required for expenditure of funds.
- 90.42.090 Jurisdictional authorities not altered.
- 90.42.900 Severability—1991 c 347.

90.42.005 Policy—Findings. (1) It is the policy of the state of Washington to recognize and preserve water rights in accordance with RCW 90.03.010.

(2) The legislature finds that:

(a) The state of Washington is faced with a shortage of water with which to meet existing and future needs, particularly during the summer and fall months and in dry years when the demand is greatest;

(b) Consistent with RCW 90.54.180, conservation and water use efficiency programs, including storage, should be the preferred methods of addressing water uses because they can relieve current critical water situations, provide for presently unmet needs, and assist in meeting future water needs. Presently unmet needs or current needs includes the water required to increase the frequency of occurrence of base or minimum flow levels in streams of the state, the water necessary to satisfy existing water rights, or the water necessary to provide full supplies to existing water systems with current supply deficiencies; and

(c) The interests of the state will be served by developing programs and regional water resource plans, in cooperation with local governments, federally recognized tribal governments, appropriate federal agencies, private citizens, and the various water users and water interests in the state, that increase the overall ability to manage the state's waters in order to resolve conflicts and to better satisfy both present and future needs for water. [1991 c 347 § 1.]

Purposes—1991 c 347: "The purposes of this act are to:

(1) Improve the ability of the state to work with the United States, local governments, federally recognized tribal governments, water right holders, water users, and various water interests in water conservation and water use efficiency programs designed to satisfy existing rights, presently unmet needs, and future needs, both instream and out-of-stream;

(2) Establish new incentives, enhance existing incentives, and remove disincentives for efficient water use;

(3) Establish improved means to disseminate information to the public and provide technical assistance regarding ways to improve the efficiency of water use;

(4) Create a trust water rights mechanism for the acquisition of water rights on a voluntary basis to be used to meet presently unmet needs and future needs;

(5) Prohibit the sale of nonconforming plumbing fixtures and require the marking and labeling of fixtures meeting state standards;

(6) Reduce tax disincentives to water conservation, reuse, and improved water use efficiency; and

(7) Add achievement of water conservation as a factor to be considered by water supply utilities in setting water rates." [1991 c 347 § 2.]

90.42.010 Purpose—Water resource inventory areas—Written evaluation and recommendations. (1) The legislature finds that a need exists to develop and test a means to facilitate the voluntary transfer of water and water rights, including conserved water, to provide water for presently unmet needs and emerging needs.

Further, the legislature finds that water conservation activities have the potential of affecting the quantity of return flow waters to which existing water right holders have a right to and rely upon. It is the intent of the legislature that persons holding rights to water, including return flows, not be adversely affected in the implementation of the provisions of this chapter.

The purpose of this chapter is to provide the mechanism for accomplishing this in a manner that will not impair existing rights to water and to test the mechanism in two pilot planning areas designated pursuant to RCW 90.54.045(2) and in the water resource inventory areas designated under subsection (2) of this section.

(2) The department may designate up to four water resource inventory areas west of the crest of the Cascade mountains and up to four water resource inventory areas east of the crest of the Cascade mountains, as identified pursuant to chapter 90.54 RCW. The areas designated shall contain critical water supply problems and shall provide an opportunity to test and evaluate a variety of applications of RCW 90.42.010 through 90.42.090, including application to municipal, industrial, and agricultural use. The department shall seek advice from appropriate state agencies, Indian tribes, local governments, representatives of water right holders, and interested parties before identifying such water resource inventory areas.

(3) The department shall provide to the appropriate legislative committees by December 31, 1993, a written evaluation of the implementation of RCW 90.42.010 through 90.42.090 and recommendations for future application. [1991 c 347 § 5.]

Purposes—1991 c 347: See note following RCW 90.42.005.

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

(1) "Department" means the department of ecology.

(2) "Net water savings" means the amount of water that is determined to be conserved and usable within a specified stream reach or reaches for other purposes without impairment or detriment to water rights existing at the time that a water conservation project is undertaken, reducing the ability to deliver water, or reducing the supply of water that otherwise would have been available to other existing water uses.

(3) "Trust water right" means any water right acquired by the state under this chapter for management in the state's trust water rights program.

(4) "Pilot planning areas" means the geographic areas designated under RCW 90.54.045(2).

(5) "Water conservation project" means any project or program that achieves physical or operational improvements that provide for increased water use efficiency in existing systems of diversion, conveyance, application, or use of water under water rights existing on July 28, 1991. [1991 c 347 § 6.]

Purposes—1991 c 347: See note following RCW 90.42.005.

90.42.030 Contracts to finance water conservation projects—Public benefits—Trust water rights. (1) For purposes of this chapter, the state may enter into contracts to provide moneys to assist in the financing of water conservation projects located within pilot planning areas and in water resource inventory areas designated in accordance with RCW 90.42.010. In consideration for the financial assistance provided, the state shall obtain public benefits defined in guidelines developed under RCW 90.42.050.

(2) If the public benefits to be obtained require conveyance or modification of a water right, the recipient of funds shall convey to the state the recipient's interest in that part of the water right or claim constituting all or a portion of the resulting net water savings for deposit in the trust water rights program. The amount to be conveyed shall be finitely determined by the parties, in accordance with the guidelines developed under RCW 90.42.050, before the expenditure of state funds. Conveyance may consist of complete transfer, lease contracts, or other legally binding agreements. When negotiating for the acquisition of conserved water or net water savings, or a portion thereof, the state may require evidence of a valid water right.

(3) As part of the contract, the water right holder and the state shall specify the process to determine the amount of water the water right holder would continue to be entitled to once the water conservation project is in place.

(4) The state shall cooperate fully with the United States in the implementation of this chapter. Trust water rights may be acquired through expenditure of funds provided by the United States and shall be treated in the same manner as trust water rights resulting from the expenditure of state funds.

(5) If water is proposed to be acquired by or conveyed to the state as a trust water right by an irrigation district, evidence of the district's authority to represent the water right holders shall be submitted to and for the satisfaction of the department.

(6) The state shall not contract with any person to acquire a water right served by an irrigation district without the approval of the board of directors of the irrigation district. Disapproval by a board shall be factually based on probable adverse effects on the ability of the district to deliver water to other members or on maintenance of the financial integrity of the district. [1991 c 347 § 7.]

Purposes—1991 c 347: See note following RCW 90.42.005.

90.42.040 Trust water rights program—Water right certificate—Notice of creation or modification.

(1) All trust water rights acquired by the state shall be placed in the state trust water rights program to be managed by the department. Trust water rights acquired by the state shall be held or authorized for use by the department for instream flows, irrigation, municipal, or other beneficial uses consistent with applicable regional plans for pilot planning areas, or to resolve critical water supply problems in water resource inventory areas designated in accordance with RCW 90.42.010.

(2) The department shall issue a water right certificate in the name of the state of Washington for each permanent trust water right conveyed to the state indicating the reach or reaches of the stream, the quantity, and the use or uses to which it may be applied. A superseding certificate shall be issued that specifies the amount of water the water right holder would continue to be entitled to as a result of the water conservation project. The superseding certificate shall retain the same priority date as the original right. For nonpermanent conveyances, the department shall issue certificates or such other instruments as are necessary to reflect the changes in purpose or place of use or point of diversion or withdrawal. Water rights for which such nonpermanent conveyances are arranged shall not be subject to relinquishment for nonuse.

(3) A trust water right retains the same priority date as the water right from which it originated, but as between them the trust right shall be deemed to be inferior in priority unless otherwise specified by an agreement between the state and the party holding the original right.

(4) Exercise of a trust water right may be authorized only if the department first determines that neither water rights existing at the time the trust water right is established, nor the public interest will be impaired. If impairment becomes apparent during the time a trust water right is being exercised, the department shall cease or modify the use of the trust water right to eliminate the impairment.

(5) Before any trust water right is created or modified, the department shall, at a minimum, require that a notice be published in a newspaper of general circulation published in the county or counties in which the storage, diversion, and use are to be made, and in other newspapers as the department determines is necessary, once a week for two consecutive weeks. At the same time the department shall send a notice containing pertinent information to all appropriate state agencies, potentially affected local governments and federally recognized tribal governments, and other interested parties.

(6) RCW 90.14.140 through 90.14.230 have no applicability to trust water rights held by the department under this chapter or exercised under this section.

(7) RCW 90.03.380 has no applicability to trust water rights acquired by the state through the funding of water conservation projects. [1991 c 347 § 8.]

Purposes—1991 c 347: See note following RCW 90.42.005.

90.42.050 Guidelines governing trust water rights—Submission of guidelines to joint select committee. The department, in cooperation with federally recognized Indian tribes, local governments, state agencies, and other interested parties, shall establish guidelines by July 1, 1992, governing the acquisition, administration, and management of trust water rights. The guidelines shall address at a minimum the following:

(1) Methods for determining the net water savings resulting from water conservation projects or programs carried out in accordance with this chapter, and other

factors to be considered in determining the quantity or value of water available for potential designation as a trust water right;

(2) Criteria for determining the portion of net water savings to be conveyed to the state under this chapter;

(3) Criteria for prioritizing water conservation projects;

(4) A description of potential public benefits that will affect consideration for state financial assistance in RCW 90.42.030;

(5) Procedures for providing notification to potentially interested parties;

(6) Criteria for the assignment of uses of trust water rights acquired in areas of the state not addressed in a regional water resource plan or critical area agreement; and

(7) Contracting procedures and other procedures not specifically addressed in this section.

These guidelines shall be submitted to the joint select committee on water resource policy before adoption. [1991 c 347 § 9.]

Purposes—1991 c 347: See note following RCW 90.42.005.

90.42.060 Chapter 43.83B or 43.99E RCW not replaced or amended. The policies and purposes of this chapter shall not be construed as replacing or amending the policies or the purposes for which funds available under chapter 43.83B or 43.99E RCW may be used. [1991 c 347 § 10.]

Purposes—1991 c 347: See notes following RCW 90.42.005.

90.42.070 Involuntary impairment of existing water rights not authorized. Nothing in this chapter authorizes the involuntary impairment of any existing water rights. [1991 c 347 § 11.]

Purposes—1991 c 347: See note following RCW 90.42.005.

90.42.080 Trust water rights in pilot planning areas and in water resource inventory areas—Acquisition, exercise, and transfer—Appropriation required for expenditure of funds. (1) Within the pilot planning areas, and in water resource inventory areas designated in accordance with RCW 90.42.010, the state may acquire all or portions of existing water rights, by purchase, gift, or other appropriate means other than by condemnation, from any person or entity or combination of persons or entities. Once acquired, such rights are trust water rights.

(2) The department may enter into leases, contracts, or such other arrangements with other persons or entities as appropriate, to ensure that trust water rights acquired in accordance with this chapter may be exercised to the fullest possible extent.

(3) Trust water rights may be acquired by the state on a temporary or permanent basis.

(4) The provisions of RCW 90.03.380 and 90.03.390 apply to transfers of water rights under this section.

(5) No funds may be expended for the purchase of water rights by the state pursuant to this section unless

specifically appropriated for this purpose by the legislature. [1991 c 347 § 12.]

Purposes—1991 c 347: See note following RCW 90.42.005.

90.42.090 Jurisdictional authorities not altered. It is the intent of the legislature that jurisdictional authorities that exist in law not be expanded, diminished, or altered in any manner whatsoever by this chapter. [1991 c 347 § 13.]

Purposes—1991 c 347: See note following RCW 90.42.005.

90.42.900 Severability—1991 c 347. 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. [1991 c 347 § 30.]

Chapter 90.48

WATER POLLUTION CONTROL

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90.48.390	Coastal protection fund—Established—Moneys credited to—Use.
90.48.400	Coastal protection fund—Disbursal of moneys from.
90.48.410	Repealed.
90.48.465	Water discharge fees.
90.48.510	Recodified as RCW 88.46.160.
90.48.907	Recodified as RCW 90.56.900.
90.48.910	Repealed.

90.48.037 Authority of department to bring enforcement actions. The department, with the assistance of the attorney general, is authorized to bring any appropriate action at law or in equity, including action for injunctive relief, in the name of the people of the state of Washington as may be necessary to carry out the provisions of this chapter or chapter 90.56 RCW. [1991 c 200 § 1102; 1987 c 109 § 125; 1967 c 13 § 7.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.095 Authority of department to compel attendance and testimony of witnesses, production of books and papers—Contempt proceedings to enforce—Fees. In carrying out the purposes of this chapter or chapter 90.56 RCW the department shall, in conjunction with either the adoption of rules, consideration of an application for a waste discharge permit or the termination or modification of such permit, or proceedings in adjudicative hearings, have the authority to issue process and subpoena witnesses effective throughout the state on its own behalf or that of an interested party, compel their attendance, administer oaths, take the testimony of any person under oath and, in connection therewith require the production for examination of any books or papers relating to the matter under consideration by the department. In case of disobedience on the part of any person to comply with any subpoena issued by the department, or on the refusal of any witness to testify to any matters regarding which he may be lawfully interrogated, it shall be the duty of the superior court of any county, or of the judge thereof, on application of the department, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. In connection with the authority granted under this section no witness or other person shall be required to divulge trade secrets or secret processes. Persons responding to a subpoena as provided herein shall be entitled to fees as are witnesses in superior court. [1991 c 200 § 1103; 1987 c 109 § 128; 1967 c 13 § 9.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.100 Request for assistance. The department shall have the right to request and receive the assistance of any educational institution or state agency when it is

deemed necessary by the department to carry out the provisions of this chapter or chapter 90.56 RCW. [1991 c 200 § 1104; 1987 c 109 § 129; 1945 c 216 § 16; Rem. Supp. 1945 § 10964p.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.142 Violations—Liability in damages for injury or death of fish, animals, vegetation—Action to recover. (1) Any person who:

(a)(i) Violates any of the provisions of this chapter or chapter 90.56 RCW;

(ii) Fails to perform any duty imposed by this chapter or chapter 90.56 RCW;

(iii) Violates an order or other determination of the department or the director made pursuant to the provisions of this chapter or chapter 90.56 RCW;

(iv) Violates the conditions of a waste discharge permit issued pursuant to RCW 90.48.160; or

(v) Otherwise causes a reduction in the quality of the state's waters below the standards set by the department or, if no standards have been set, causes significant degradation of water quality, thereby damaging the same; and

(b) Causes the death of, or injury to, fish, animals, vegetation, or other resources of the state; shall be liable to pay the state and affected counties and cities damages in an amount determined pursuant to RCW 90.48.367.

(2) No action shall be authorized under this section against any person operating in compliance with the conditions of a waste discharge permit issued pursuant to RCW 90.48.160. [1991 c 200 § 810; 1989 c 262 § 2; 1988 c 36 § 69; 1987 c 109 § 132; 1985 c 316 § 6; 1970 ex.s. c 88 § 12; 1967 ex.s. c 139 § 13.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Findings—1989 c 262: "The legislature finds that there is confusion regarding the measure of damages authorized under RCW 90.48.142. The intent of this act is to clarify existing law on the measure of damages authorized under RCW 90.48.142, not to change the law." [1989 c 262 § 1.] "This act" consists of the 1989 c 262 amendments to RCW 90.48.142, 90.48.390, and 90.48.400.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Severability—1967 ex.s. c 139: See RCW 82.34.900.

90.48.156 Cooperation with other states and provinces—Interstate and state-provincial projects. The department is authorized to cooperate with appropriate agencies of neighboring states and neighboring provinces, to enter into contracts, and make contributions toward interstate and state-provincial projects to carry out the purposes of this chapter and chapter 90.56 RCW. [1991 c 200 § 1105; 1987 c 109 § 134; 1949 c 58 § 2; Rem. Supp. 1949 § 10964pp-1. Formerly RCW 90.48.050.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.240 Water pollution orders for conditions requiring immediate action—Appeal. Notwithstanding any other provisions of this chapter or chapter 90.56 RCW, whenever it appears to the director that water quality conditions exist which require immediate action to protect the public health or welfare, or that a person required by RCW 90.48.160 to obtain a waste discharge permit prior to discharge is discharging without the same, or that a person conducting an operation which is subject to a permit issued pursuant to RCW 90.48.160 conducts the same in violation of the terms of said permit, causing water quality conditions to exist which require immediate action to protect the public health or welfare, the director may issue a written order to the person or persons responsible without prior notice or hearing, directing and affording the person or persons responsible the alternative of either (1) immediately discontinuing or modifying the discharge into the waters of the state, or (2) appearing before the department at the time and place specified in said written order for the purpose of providing to the department information pertaining to the violations and conditions alleged in said written order. The responsible person or persons shall be afforded not less than twenty-four hours notice of such an information meeting. If following such a meeting the department determines that water quality conditions exist which require immediate action as described herein, the department may issue a written order requiring immediate discontinuance or modification of the discharge into the waters of the state. In the event an order is not immediately complied with the attorney general, upon request of the department, shall seek and obtain an order of the superior court of the county in which the violation took place directing compliance with the order of the department. Such an order is appealable pursuant to RCW 43.21B.310. [1991 c 200 § 1106; 1987 c 109 § 15; 1967 c 13 § 22.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.315 Recodified as RCW 90.56.010. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.320 Recodified as RCW 90.56.320. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.325 Recodified as RCW 90.56.340. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.330 Recodified as RCW 90.56.350. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.335 Recodified as RCW 90.56.360. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.336 Recodified as RCW 90.56.370. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.338 Recodified as RCW 90.56.380. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.340 Recodified as RCW 90.56.400. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.343 Recodified as RCW 90.56.420. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.345 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.350 Recodified as RCW 90.56.330. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.355 Recodified as RCW 90.56.410. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.360 Recodified as RCW 90.56.280. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.364 Discharge of oil into waters of the state—Definitions. For the purposes of this chapter, "technical feasibility" or "technically feasible" means that given available technology, a restoration or enhancement project can be successfully completed at a cost that is not disproportionate to the value of the resource before the injury. [1991 c 200 § 811.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

90.48.365 Recodified as RCW 90.56.040. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.366 Discharge of oil into waters of the state—Compensation schedule. By July 1, 1991, the department, in consultation with the departments of fisheries, wildlife, and natural resources, and the parks and recreation commission, shall adopt rules establishing a compensation schedule for the discharge of oil in violation of this chapter and chapter 90.56 RCW. The department shall establish a scientific advisory board to assist in establishing the compensation schedule. The amount of compensation assessed under this schedule shall be no less than one dollar per gallon of oil spilled and no greater than fifty dollars per gallon of oil spilled.

The compensation schedule shall reflect adequate compensation for unquantifiable damages or for damages not quantifiable at reasonable cost for any adverse environmental, recreational, aesthetic, or other effects caused by the spill and shall take into account:

(1) Characteristics of any oil spilled, such as toxicity, dispersibility, solubility, and persistence, that may affect the severity of the effects on the receiving environment, living organisms, and recreational and aesthetic resources;

(2) The sensitivity of the affected area as determined by such factors as: (a) The location of the spill; (b) habitat and living resource sensitivity; (c) seasonal distribution or sensitivity of living resources; (d) areas of recreational use or aesthetic importance; (e) the proximity of the spill to important habitats for birds, aquatic mammals, fish, or to species listed as threatened or endangered under state or federal law; and (f) other areas of special ecological or recreational importance, as determined by the department; and

(3) Actions taken by the party who spilled oil or any party liable for the spill that: (a) Demonstrate a recognition and affirmative acceptance of responsibility for the spill, such as the immediate removal of oil and the amount of oil removed from the environment; or (b) enhance or impede the detection of the spill, the determination of the quantity of oil spilled, or the extent of damage, including the unauthorized removal of evidence such as injured fish or wildlife. [1991 c 200 § 812; 1989 c 388 § 2.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Intent—Application—Captions—Severability—1989 c 388: See notes following RCW 90.56.010.

90.48.367 Discharge of oil into waters of the state—Assessment of compensation. (1) After a spill or other incident causing damages to the natural resources of the state, the department shall conduct a formal preassessment screening as provided in RCW 90.48.368.

(2) The department shall use the compensation schedule established under RCW 90.48.366 to determine the amount of damages if the preassessment screening committee determines that: (a) Restoration or enhancement of the injured resources is not technically feasible; (b) damages are not quantifiable at a reasonable cost; and (c) the restoration and enhancement projects or studies proposed by the liable parties are insufficient to adequately compensate the people of the state for damages.

(3) If the preassessment screening committee determines that the compensation schedule should not be used, compensation shall be assessed for the amount of money necessary to restore any damaged resource to its condition before the injury, to the extent technically feasible, and compensate for the lost value incurred during the period between injury and restoration.

(4) Restoration shall include the cost to restock such waters, replenish or replace such resources, and otherwise restore the stream, lake, or other waters of the

state, including any estuary, ocean area, submerged lands, shoreline, bank, or other lands adjoining such waters to its condition before the injury, as such condition is determined by the department. The lost value of a damaged resource shall be equal to the sum of consumptive, nonconsumptive, and indirect use values, as well as lost taxation, leasing, and licensing revenues. Indirect use values may include existence, bequest, option, and aesthetic values. Damages shall be determined by generally accepted and cost-effective procedures, including, but not limited to, contingent valuation method studies.

(5) Compensation assessed under this section shall be recoverable in an action brought by the attorney general on behalf of the people of the state of Washington and affected counties and cities in the superior court of Thurston county or any county in which damages occurred. Moneys recovered by the attorney general under this section shall be deposited in the coastal protection fund established under RCW 90.48.390, and shall only be used for the purposes stated in RCW 90.48.400.

(6) Compensation assessed under this section shall preclude claims under this chapter by local governments for compensation for damages to publicly owned resources resulting from the same incident. [1991 c 200 § 813; 1989 c 388 § 3.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Intent—Application—Captions—Severability—1989 c 388: See notes following RCW 90.56.010.

90.48.368 Discharge of oil into waters of the state—Preassessment screening. (1) The department shall adopt rules establishing a formal process for preassessment screening of damages resulting from spills to the waters of the state causing the death of, or injury to, fish, animals, vegetation, or other resources of the state. The rules shall specify the conditions under which the department shall convene a preassessment screening committee. The preassessment screening process shall occur concurrently with reconnaissance activities. The committee shall use information obtained from reconnaissance activities as well as any other relevant resource and resource use information. For each incident, the committee shall determine whether a damage assessment investigation should be conducted, or, whether the compensation schedule authorized under RCW 90.48.366 and 90.48.367 should be used to assess damages. The committee may accept restoration or enhancement projects or studies proposed by the liable parties in lieu of some or all of: (a) The compensation schedule authorized under RCW 90.48.366 and 90.48.367; or (b) the claims from damage assessment studies authorized under RCW 90.48.142.

(2) A preassessment screening committee may consist of representatives of the departments of ecology, fisheries, wildlife, natural resources, social and health services, and emergency management, the parks and recreation commission, as well as other federal, state, and local

agencies, and tribal and local governments whose presence would enhance the reconnaissance or damage assessment aspects of spill response. The department shall chair the committee and determine which representatives will be needed on a spill-by-spill basis.

(3) The committee shall consider the following factors when determining whether a damage assessment study authorized under RCW 90.48.367 should be conducted: (a) Whether evidence from reconnaissance investigations suggests that injury has occurred or is likely to occur to publicly owned resources; (b) the potential loss in services provided by resources injured or likely to be injured and the expected value of the potential loss; (c) whether a restoration project to return lost services is technically feasible; (d) the accuracy of damage quantification methods that could be used and the anticipated cost-effectiveness of applying each method; (e) the extent to which likely injury to resources can be verified with available quantification methods; and (f) whether the injury, once quantified, can be translated into monetary values with sufficient precision or accuracy.

(4) When a resource damage assessment is required for an oil spill in the navigable waters of the state, as defined in RCW 90.56.010, the state trustee agency responsible for the resource and habitat damaged shall conduct the damage assessment and pursue all appropriate remedies with the responsible party.

(5) Oil spill damage assessment studies authorized under RCW 90.48.367 may only be conducted if the committee, after considering the factors enumerated in subsection (3) of this section, determines that the damages to be investigated are quantifiable at a reasonable cost and that proposed assessment studies are clearly linked to quantification of the damages incurred.

(6) As new information becomes available, the committee may reevaluate the scope of damage assessment using the factors listed in subsection (3) of this section and may reduce or expand the scope of damage assessment as appropriate.

(7) The preassessment screening process shall provide for the ongoing involvement of persons who may be liable for damages resulting from an oil spill. The department may negotiate with a potentially liable party to perform restoration and enhancement projects or studies which may substitute for all or part of the compensation authorized under RCW 90.48.366 and 90.48.367 or the damage assessment studies authorized under RCW 90.48.367.

(8) For the purposes of this section and RCW 90.48.367, the cost of a damage assessment shall be considered "reasonable" when the anticipated cost of the damage assessment is expected to be less than the anticipated damage that may have occurred or may occur. [1991 c 200 § 814; 1989 c 388 § 4.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Intent—Application—Captions—Severability—1989 c 388: See notes following RCW 90.56.010.

90.48.369 Discharge of oil into waters of the state—Annual report. The department shall submit an

annual report to the appropriate standing committees of the legislature for the next five years beginning January 1, 1990. The annual report shall cover the implementation of RCW 90.48.366, 90.48.367, 90.48.368, and 90.48.369 and shall include information on each spill for which a preassessment screening committee was convened, the outcome of each process, any compensation claims imposed or damage assessment studies conducted, and the revenues to and expenditures from the coastal protection fund. [1991 c 200 § 817; 1989 c 388 § 5.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Intent—Application—Captions—Severability—1989 c 388: See notes following RCW 90.56.010.

90.48.370 Recodified as RCW 90.56.030. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.371 Recodified as RCW 90.56.210. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.372 Recodified as RCW 90.56.240. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.373 Recodified as RCW 90.56.250. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.374 Recodified as RCW 90.56.260. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.375 Recodified as RCW 90.56.270. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.376 Recodified as RCW 90.56.300. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.377 Recodified as RCW 90.56.310. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.378 Recodified as RCW 90.56.060. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.380 Recodified as RCW 90.56.050. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.381 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.383 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.385 Recodified as RCW 88.46.150. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.386 Department of natural resources leases. After May 15, 1991, the department of natural resources shall include in its leases for onshore and offshore facilities the following provisions:

(1) Require those wishing to lease, sublease, or re-lease state-owned aquatic lands to comply with the provisions of this chapter;

(2) Require lessees and sublessees to operate according to the plan of operations and to keep the plan current in compliance with this chapter; and

(3) Include in its leases provisions that a violation by the lessee or sublessee of the provisions of this chapter may be grounds for termination of the lease. [1991 c 200 § 1101.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

90.48.387 Recodified as RCW 90.56.100. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.388 Recodified as RCW 90.56.110. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.390 Coastal protection fund—Established—Moneys credited to—Use. The coastal protection fund is established to be used by the department as a revolving fund for carrying out the purposes of restoration of natural resources under this chapter and chapter 90.56 RCW. To this fund there shall be credited penalties, fees, damages, charges received pursuant to the provisions of this chapter and chapter 90.56 RCW, compensation for damages received under this chapter and chapter 90.56 RCW, and an amount equivalent to one cent per gallon from each marine use refund claim under RCW 82.36.330.

Moneys in the fund not needed currently to meet the obligations of the department in the exercise of its powers, duties, and functions under RCW 90.48.142, 90.48.366, 90.48.367, and 90.48.368 shall be deposited with the state treasurer to the credit of the fund. [1991 1st sp.s. c 13 § 84; 1991 c 200 § 815; 1989 c 388 § 7; 1989 c 262 § 3; 1971 ex.s. c 180 § 4.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Intent—Application—Captions—Severability—1989 c 388: See notes following RCW 90.56.010.

Findings—1989 c 262: See note following RCW 90.48.142.

90.48.400 Coastal protection fund—Disbursal of moneys from. (1) Moneys in the coastal protection fund shall be disbursed for the following purposes and no others:

(a) Environmental restoration and enhancement projects intended to restore or enhance environmental, recreational, or aesthetic resources for the benefit of Washington's citizens;

(b) Investigations of the long-term effects of oil spills; and

(c) Development and implementation of an aquatic land geographic information system.

(2) The director may allocate a portion of the fund to be devoted to research and development in the causes, effects, and removal of pollution caused by the discharge of oil or other hazardous substances.

(3) A steering committee consisting of representatives of the department of ecology, fisheries, wildlife, and natural resources, and the parks and recreation commission shall authorize the expenditure of the moneys collected under RCW 90.48.366 through 90.48.368, after consulting impacted local agencies and local and tribal governments.

(4) Agencies may not be reimbursed from the coastal protection fund for the salaries and benefits of permanent employees for routine operational support. Agencies may only be reimbursed under this section if money for reconnaissance and damage assessment activities is unavailable from other sources. [1991 c 200 § 816; 1990 c 116 § 14. Prior: 1989 c 388 § 8; 1989 c 262 § 4; 1971 ex.s. c 180 § 5.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

Intent—Application—Captions—Severability—1989 c 388: See notes following RCW 90.56.010.

Findings—1989 c 262: See note following RCW 90.48.142.

90.48.410 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.465 Water discharge fees. (1) The department shall establish annual fees to collect expenses for issuing and administering each class of permits under RCW 90.48.160, 90.48.162, and 90.48.260. An initial fee schedule shall be established by rule within one year of March 1, 1989, and thereafter the fee schedule shall be adjusted no more often than once every two years. This fee schedule shall apply to all permits, regardless of date of issuance, and fees shall be assessed prospectively. All fees charged shall be based on factors relating to the complexity of permit issuance and compliance and may be based on pollutant loading and toxicity and be designed to encourage recycling and the reduction of the quantity of pollutants. Fees shall be established in amounts to fully recover and not to exceed expenses incurred by the department in processing permit applications and modifications, monitoring and evaluating compliance with permits, conducting inspections, securing laboratory analysis of samples taken during inspections, reviewing plans and documents directly related to operations of permittees, overseeing performance of delegated pretreatment programs, and supporting the overhead expenses that are directly related to these activities.

(2) The annual fee paid by a municipality, as defined in 33 U.S.C. Sec. 1362, for all domestic wastewater facility permits issued under RCW 90.48.162 and 90.48.260 shall not exceed the total of a maximum of fifteen cents per month per residence or residential equivalent contributing to the municipality's wastewater system. The department shall adopt by rule a schedule of credits for any municipality engaging in a comprehensive monitoring program beyond the requirements imposed by the department, with the credits available for five years from March 1, 1989, and with the total amount of all credits not to exceed fifty thousand dollars in the five-year period.

(3) The department shall ensure that indirect dischargers do not pay twice for the administrative expense of a permit. Accordingly, administrative expenses for permits issued by a municipality under RCW 90.48.165 are not recoverable by the department.

(4) In establishing fees, the department shall consider the economic impact of fees on small dischargers and the economic impact of fees on public entities required to obtain permits for storm water runoff and shall provide appropriate adjustments.

(5) All fees collected under this section shall be deposited in the water quality permit account hereby created in the state treasury. Moneys in the account may be appropriated only for purposes of administering permits under RCW 90.48.160, 90.48.162, and 90.48.260.

(6) The department shall submit an annual report to the legislature showing detailed information on fees collected, actual expenses incurred, and anticipated expenses for the current and following fiscal years.

(7) The legislative budget committee in 1993 shall review the fees established under this section and report its findings to the legislature in January 1994. [1991 c 307 § 1; 1989 c 2 § 13 (Initiative Measure No. 97, approved November 8, 1988).]

Short title—Captions—Construction—Existing agreements—Effective date—Severability—1989 c 2: See RCW 70.105D.900 through 70.105D.921, respectively.

90.48.510 Recodified as RCW 88.46.160. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.907 Recodified as RCW 90.56.900. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.48.910 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

Chapter 90.50A

WATER POLLUTION CONTROL FACILITIES— FEDERAL CAPITALIZATION GRANTS

Sections
90.50A.020 Water pollution control revolving fund.

90.50A.020 Water pollution control revolving fund.

(1) The water pollution control revolving fund is hereby established in the custody of the state treasurer. Moneys in this fund are not subject to legislative appropriation. Moneys in the fund may be spent only in a manner consistent with this chapter.

(2) The water pollution control revolving fund shall consist of:

(a) All capitalization grants provided by the federal government under the federal water quality act of 1987;

(b) All state matching funds appropriated or authorized by the legislature;

(c) Any other revenues derived from gifts or bequests pledged to the state for the purpose of providing financial assistance for water pollution control projects;

(d) All repayments of moneys borrowed from the fund;

(e) All interest payments made by borrowers from the fund;

(f) Any other fee or charge levied in conjunction with administration of the fund; and

(g) Any new funds as a result of leveraging. [1991 1st sp.s. c 13 § 102; 1988 c 284 § 3.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

Chapter 90.54

WATER RESOURCES ACT OF 1971

Sections	
90.54.010	Purpose.
90.54.024	Joint select committee on water resource policy— Created—Membership—Staff—Power and duties—Reports—Expiration of section.
90.54.030	Department to be informed as to all phases of water and related resources—Duties in so accomplishing—Water resources information system.
90.54.035	State funding of water resource programs—Priorities.
90.54.045	Water resource planning—Pilot process—Report to the legislature.

90.54.010 Purpose. (1) The legislature finds that:

(a) Proper utilization of the water resources of this state is necessary to the promotion of public health and the economic well-being of the state and the preservation of its natural resources and aesthetic values. Although water is a renewable resource, its supply and availability are becoming increasingly limited, particularly during summer and fall months and dry years when demand is greatest. Growth and prosperity have significantly increased the competition for this limited resource. Adequate water supplies are essential to meet the needs of the state's growing population and economy. At the same time instream resources and values must be preserved and protected so that future generations can continue to enjoy them.

(b) All citizens of Washington share an interest in the proper stewardship of our invaluable water resources. To ensure that available water supplies are managed to best meet both instream and offstream needs, a comprehensive planning process is essential. The people of the state have the unique opportunity to work together to plan

and manage our water. Through a comprehensive planning process that includes the state, Indian tribes, local governments, and interested parties, it is possible to make better use of available water supplies and achieve better management of water resources. Through comprehensive planning, conflicts among water users and interests can be reduced or resolved. It is in the best interests of the state that comprehensive water resource planning be given a high priority so that water resources and associated values can be utilized and enjoyed today and protected for tomorrow.

(c) Diverse hydrologic, climatic, cultural, and socioeconomic conditions exist throughout the regions of the state. Water resource issues vary significantly across regions. Comprehensive water resource planning is best accomplished through a regional planning process sensitive to the unique characteristics and issues of each region.

(d) Comprehensive water resource planning must provide interested parties adequate opportunity to participate. Water resource issues are best addressed through cooperation and coordination among the state, Indian tribes, local governments, and interested parties.

(e) The long-term needs of the state require ongoing assessment of water availability, use, and demand. A thorough inventory of available resources is essential to water resource management. Current state water resource data and data management is inadequate to meet changing needs and respond to competing water demands. Therefore, a state water resource data program is needed to support an effective water resource management program. Efforts should be made to coordinate and consolidate into one resource data system all relevant information developed by the department of ecology and other agencies relating to the use, protection, and management of the state's water resources.

(2) It is the purpose of this chapter to set forth fundamentals of water resource policy for the state to insure that waters of the state are protected and fully utilized for the greatest benefit to the people of the state of Washington and, in relation thereto, to provide direction to the department of ecology, other state agencies and officials, and local government in carrying out water and related resources programs. It is the intent of the legislature to work closely with the executive branch, Indian tribes, local government, and interested parties to ensure that water resources of the state are wisely managed. [1990 c 295 § 1; 1971 ex.s. c 225 § 1.]

90.54.024 Joint select committee on water resource policy—Created—Membership—Staff—Power and duties—Reports—Expiration of section. (1) The legislature finds that state-wide water resource policies are undergoing transition as state, local, and tribal governments and interested parties attempt to confront increasing demands for limited water resources. Water resource issues are complex and far-reaching; they require vision and foresight in addition to a solid foundation of knowledge to guide legislative decision making. It is in the best interests of the public that a joint committee of the legislature gain particular expertise in water

resource issues and actively participate with local governments, Indian tribes, and interested parties in the development of recommendations for state water resource policy.

(2) There is hereby created a joint select committee on water resource policy to address the important water resource issues of this state, to monitor the implementation of comprehensive regional water resource planning and data management required by RCW 90.54.010, 90.54.030, and 90.54.045, and to otherwise develop an expertise in water resource issues in order to advise the legislature regarding state water policy. The committee shall consist of twelve voting members appointed jointly by the speaker of the house of representatives and the president of the senate. The speaker of the house of representatives and the president of the senate may each appoint nonvoting members to participate in the meetings of the joint select committee. The voting membership shall be equally divided from each major political caucus and shall, to the extent possible, represent all major water interests, including but not limited to agriculture, fisheries, municipal, environmental, recreational, and hydroelectric.

(3) The staff support shall be provided by the senate committee services and the office of program research as mutually agreed by the cochairs of the joint select committee. The cochairs shall be designated by the speaker of the house of representatives and the president of the senate.

(4) In addition to responsibilities identified in this section, the purpose of the joint select committee shall be to address and recommend in written annual reports to the full legislature the fundamentals of water resource policy for the state of Washington. The joint select committee shall work with state, tribal, and local governments and interested parties to identify significant water resource issues and to develop recommendations to the legislature to address water resource needs.

(5) The joint select committee may include in its annual reports to the legislature recommendations for revisions to existing laws to set forth the water policies of the state and may also recommend revisions to existing law to give direction to the department of ecology and other agencies and officials in carrying out the fundamental water policies of the state as adopted by the legislature. In its 1991 report to the legislature, the joint select committee shall provide information and recommendations regarding the regulatory role of the utilities and transportation commission, with particular emphasis on problems and recommended solutions associated with financial viability of small water systems.

(6) This section shall expire June 30, 1993. [1991 c 273 § 1; 1988 c 47 § 3.]

Application—Severability—1988 c 47: See notes following RCW 43.83B.300.

90.54.030 Department to be informed as to all phases of water and related resources—Duties in so accomplishing—Water resources information system. For the purpose of ensuring that the department is fully advised in relation to the performance of the water resources

program provided in RCW 90.54.040, and to provide information and support to the joint select committee established in RCW 90.54.024, the department is directed to become informed with regard to all phases of water and related resources of the state. To accomplish this objective the department shall:

(1) Develop a comprehensive water resource data program that provides the information necessary for effective planning and management on a regional and state-wide basis. The data program shall include an information management plan describing the data requirements for effective water resource planning, and a system for collecting and providing access to water resource data on a regional and state-wide basis. The water resource data program shall also include a resource inventory and needs assessment pursuant to subsection (5) of this section;

(2) Collect, organize and catalog existing information and studies available to it from all sources, both public and private, pertaining to water and related resources of the state;

(3) Develop such additional data and studies pertaining to water and related resources as are necessary to accomplish the objectives of this chapter;

(4) Develop alternate courses of action to solve existing and foreseeable problems of water and related resources and include therein, to the extent feasible, the economic and social consequences of each such course, and the impact on the natural environment;

(5) Establish a water resources data management task force to evaluate data management needs, advise the joint select committee on water resource policy, the legislature, and the department in developing an information management plan, and conduct a water resource inventory and needs assessment. The task force shall include representatives of appropriate state agencies, Indian tribes, local governments, and interested parties. The task force shall include expertise in both water resources and resource data management. The task force shall make recommendations to the department on developing a data base for water resource planning throughout the state. In conducting the water resource inventory and needs assessment, the task force shall oversee the inventory of existing data and determine what additional data is needed for effective water resource planning and management. The task force shall otherwise provide continuing guidance to the joint select committee on water resource policy, the legislature, and the department in developing and maintaining an effective information management plan. The department shall coordinate the water resource data program to provide water resource information that meets the needs of the comprehensive water resources program and planning process provided for in RCW 90.54.040;

(6) Prior to September 1, 1990, provide a report to the chairs of the appropriate legislative committees based on the preliminary findings and recommendations of the water resources data management task force. The report shall document the current information flows and data collection processes for state water resources data,

and shall include an analysis of task force recommendations for developing additional information to meet water resource data needs. The report shall further include an estimate of funding requirements to implement the water resources data program for consideration in future biennial budget decisions;

(7) Prior to implementation of any preliminary findings and recommendations pursuant to subsection (6) of this section, and contingent on legislative appropriation, develop a five-year plan for data collection and information management approved by the department of information services. Commencing July 1, 1991, the department shall provide annual reports to the chairs of the appropriate legislative committees on the development and implementation of the five-year plan and progress toward completion of the water resource inventory and needs assessment; and

(8) Establish pursuant to task force recommendations a process to resolve technical issues in the development and implementation of the water resource inventory and needs assessment.

All the foregoing shall be included in a "water resources information system" established and maintained by the department. The department shall develop a system of cataloging, storing and retrieving the information and studies of the information system so that they may be made readily available to and effectively used not only by the department but by the public generally. [1990 c 295 § 2; 1988 c 47 § 4; 1971 ex.s. c 225 § 3.]

Application—Severability—1988 c 47: See notes following RCW 43.83B.300.

90.54.035 State funding of water resource programs—Priorities. (1) State funding of water resource, supply, and quality related capital programs, both current and future, shall, to the maximum extent possible within state or federal legal requirements, be directed to assist in the resolution of current conflicts and implementation of regional water resource plans with priority given to current needs over new requirements.

(2) Consistent with RCW 90.54.180, priority shall be given, to the maximum extent possible within state or federal legal requirements, to those water conservation projects funded by the state that will result in the greatest net water savings. [1991 c 347 § 3.]

Purposes—1991 c 347: See note following RCW 90.42.005.

Severability—1991 c 347: See RCW 90.42.900.

90.54.045 Water resource planning—Pilot process—Report to the legislature. (1) In the development and implementation of the comprehensive state water resources program required in RCW 90.54.040(1), the process described therein shall involve participation of appropriate state agencies, Indian tribes, local governments, and interested parties, and shall be applied on a regional basis pursuant to subsection (2) of this section.

(2) Prior to July 1, 1991, the department, with advice from appropriate state agencies, Indian tribes, local government, and interested parties, shall identify regions

and establish regional boundaries for water resource planning and shall designate two regions in which the process shall be initiated on a pilot basis. One region shall encompass an area within the Puget Sound basin in which critical water resource issues exist. A concurrent pilot process may encompass a region east of the Cascade mountains.

(3) The department shall report to the chairs of the appropriate legislative committees prior to July 1st each year summarizing the progress of the pilot process in the two regions. The pilot process in each region shall be completed and shall produce a regional water plan by December 31, 1993.

(4) Appropriate state agencies, Indian tribes, local governments, and interested parties in regions not selected for the pilot program are strongly encouraged to commence water resource planning within their regions. [1991 c 347 § 4; 1990 c 295 § 3.]

Effective date—1991 c 347 § 4: "Section 4 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 347 § 28.]

Purposes—1991 c 347: See note following RCW 90.42.005.

Severability—1991 c 347: See RCW 90.42.900.

Chapter 90.56

OIL AND HAZARDOUS SUBSTANCE SPILL PREVENTION AND RESPONSE

Sections

90.56.005	Findings.
90.56.010	Definitions.
90.56.020	Director responsible for spill response.
90.56.030	Powers and duties.
90.56.040	Authority supplemental.
90.56.050	Rules.
90.56.060	State-wide master oil and hazardous substance spill prevention and contingency plan.
90.56.070	Coordination with federal law.
90.56.080	Hazardous substances incident response training and education program.
90.56.090	Small spill prevention education program.
90.56.100	Washington wildlife rescue coalition.
90.56.110	Rehabilitation of wildlife—Rules.
90.56.200	Prevention plans.
90.56.210	Contingency plans.
90.56.220	Facility operation standards.
90.56.230	Operations manuals.
90.56.240	Standards for cleanup and containment services contractors.
90.56.250	Index of prevention plans and contingency plans—Equipment inventory.
90.56.260	Adequacy of contingency plans—Practice drills—Report.
90.56.270	Enforcement of contingency plans.
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90.56.300	Unlawful operation of facility—Criminal penalties.
90.56.310	Operation of a facility or vessel without contingency or prevention plan or financial responsibility—Civil penalty.
90.56.320	Unlawful for oil to enter waters—Exceptions.
90.56.330	Additional penalties.
90.56.340	Duty to remove oil.
90.56.350	Investigation, removal, containment, treatment, or dispersal of oil and hazardous substances—Record of expenses.

90.56.360	Liability for expenses.
90.56.370	Strict liability of owner or controller of oil—Exceptions.
90.56.380	Liability of others for cleanup expenses.
90.56.390	Liability for removal costs.
90.56.400	Department investigation of circumstances of entry of oil—Order for reimbursement of expenses—Modification—Action to recover necessary expenses.
90.56.410	Right of entry and access to records pertinent to investigations.
90.56.420	Authorized discharges of oil—Permits.
90.56.450	Marine oversight board—Annual report.
90.56.500	Oil spill response account.
90.56.510	Oil spill administration account.
90.56.520	Report of authorized expenditures—Expiration of section.
90.56.900	Construction—Appeal not to stay order, rule, or regulation.
90.56.901	Effective dates—1991 c 200.
90.56.902	Captions not law.
90.56.903	Report on implementation.
90.56.904	Severability—1991 c 200.

90.56.005 Findings. (1) The legislature declares that the increasing reliance on water borne transportation as a source of supply for oil and hazardous substances poses special concern for the state of Washington. Each year billions of gallons of crude oil and refined petroleum products are transported by vessel on the navigable waters of the state. These shipments are expected to increase in the coming years. Vessels transporting oil into Washington travel on some of the most unique and special marine environments in the United States. These marine environments are a source of natural beauty, recreation, and economic livelihood for many residents of this state. As a result, the state has an obligation to assure the citizens of the state that the waters of the state will be protected from oil spills.

(2) The legislature finds that prevention is the best method to protect the unique and special marine environments in this state. The technology for containing and cleaning up a spill of oil or hazardous substances is in the early stages of development. Preventing spills is more protective of the environment and more cost-effective when all the costs associated with responding to a spill are considered.

(3) The legislature also finds that:

(a) Recent accidents in Washington, Alaska, southern California, Texas, and other parts of the nation have shown that the transportation, transfer, and storage of oil have caused significant damage to the marine environment;

(b) Even with the best efforts, it is nearly impossible to remove all oil that is spilled into the water;

(c) Washington's navigable waters are treasured environmental and economic resources that the state cannot afford to place at undue risk from an oil spill; and

(d) The state has a fundamental responsibility, as the trustee of the state's natural resources and the protector of public health and the environment to prevent the spill of oil.

(4) In order to establish a comprehensive prevention and response program to protect Washington's waters and natural resources from spills of oil, it is the purpose of this chapter:

(a) To establish state agency expertise in marine safety and to centralize state activities in spill prevention and response activities;

(b) To prevent spills of oil and to promote programs that reduce the risk of both catastrophic and small chronic spills;

(c) To ensure that responsible parties are liable, and have the resources and ability, to respond to spills and provide compensation for all costs and damages;

(d) To provide for state spill response and wildlife rescue planning and implementation;

(e) To support and complement the federal oil pollution act of 1990 and other federal law, especially those provisions relating to the national contingency plan for cleanup of oil spills and discharges, including provisions relating to the responsibilities of state agencies designated as natural resource trustees. The legislature intends this chapter to be interpreted and implemented in a manner consistent with federal law;

(f) To provide broad powers of regulation to the department of ecology relating to spill prevention and response;

(g) To provide for an independent oversight board to review the adequacy of spill prevention and response activities in this state; and

(h) To provide an adequate funding source for state response and prevention programs. [1991 c 200 § 101; 1990 c 116 § 1.]

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

(1) "Administrator" means the administrator of the office of marine safety created in RCW 43.211.010.

(2) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The director's determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering (a) the additional protection provided by the measures; (b) the technological achievability of the measures; and (c) the cost of the measures.

(3) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration (a) processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development, and (b) processes that are currently in use. In determining what is best achievable technology, the director shall consider the effectiveness, engineering feasibility, and commercial availability of the technology.

(4) "Board" means the pollution control hearings board.

(5) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, greater than three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

(6) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(7) "Committee" means the preassessment screening committee established under RCW 90.48.368.

(8) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(9) "Department" means the department of ecology.

(10) "Director" means the director of the department of ecology.

(11) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(12)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; (iii) a motor vehicle motor fuel outlet; (iv) a facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or (v) a marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(13) "Fund" means the state coastal protection fund as provided in RCW 90.48.390 and 90.48.400.

(14) "Having control over oil" shall include but not be limited to any person using, storing, or transporting oil immediately prior to entry of such oil into the waters of the state, and shall specifically include carriers and bailees of such oil.

(15) "Marine facility" means any facility used for tank vessel wharfage or anchorage, including any equipment used for the purpose of handling or transferring oil in bulk to or from a tank vessel.

(16) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(17) "Necessary expenses" means the expenses incurred by the department and assisting state agencies for (a) investigating the source of the discharge; (b) investigating the extent of the environmental damage caused by the discharge; (c) conducting actions necessary to clean up the discharge; (d) conducting predamage and damage assessment studies; and (e) enforcing the provisions of this chapter and collecting for damages caused by a discharge.

(18) "Oil" or "oils" means naturally occurring liquid hydrocarbons at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline, and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil,

diesel oil, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(19) "Offshore facility" means any facility, as defined in subsection (12) of this section, located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land.

(20) "Onshore facility" means any facility, as defined in subsection (12) of this section, any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(21)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(22) "Passenger vessel" means a ship of greater than three hundred or more gross tons or five hundred or more international gross tons carrying passengers for compensation.

(23) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(24) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(25) "Spill" means an unauthorized discharge of oil or hazardous substances into the waters of the state.

(26) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(27) "Technical feasibility" or "technically feasible" shall mean that given available technology, a restoration or enhancement project can be successfully completed at a cost that is not disproportionate to the value of the resource prior to the injury.

(28) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(29) "Worst case spill" means: (a) In the case of a vessel, a spill of the entire cargo and fuel of the vessel

complicated by adverse weather conditions; and (b) in the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions. [1991 c 200 § 102; 1990 c 116 § 2; 1989 c 388 § 6; 1985 c 316 § 5; 1971 ex.s. c 180 § 1; 1970 ex.s. c 88 § 1; 1969 ex.s. c 133 § 10. Formerly RCW 90.48.315.]

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

Intent—1989 c 388: "The legislature finds that oil spills can cause significant damage to the environment and natural resources held in trust by and for the people of this state. Some of these damages are unquantifiable, and others cannot be quantified at a reasonable cost. Both quantifiable and unquantifiable damages often occur despite prompt containment and cleanup measures. Due to the inability to measure the exact nature and extent of certain types of damages, current damage assessment methodologies used by the state inadequately assess the damage caused by oil spills.

In light of the magnitude of environmental and natural resource damage which may be caused by oil spills, and the importance of fishing, tourism, recreation, and Washington's natural abundance and beauty to the quality of life and economic future of the people of this state, the legislature declares that compensation should be sought for those damages that cannot be quantified at a reasonable cost and for those unquantifiable damages that result from oil spills. This compensation is intended to ensure that the public does not bear substantial losses caused by oil pollution for which compensation may not otherwise be received." [1989 c 388 § 1.]

Application—1989 c 388: "This act applies prospectively only, and not retroactively. It applies only to causes of action which arise after May 13, 1989." [1989 c 388 § 12.]

Captions not law—1989 c 388: "Section headings as used in this act do not constitute any part of the law." [1989 c 388 § 13.]

Severability—1989 c 388: "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." [1989 c 388 § 14.]

Severability—1969 ex.s. c 133: "If any provision of this 1969 act or the application thereof to any person or circumstance is held invalid, this 1969 act can be given effect without the invalid provision or application; and to this end the provisions of this 1969 act are declared to be severable. This 1969 act shall be liberally construed to effectuate its purpose." [1969 ex.s. c 133 § 12.] This applies to RCW 90.48.315 through 90.48.365.

Marine oil pollution—Baseline study program: RCW 43.21A.405 through 43.21A.420.

90.56.020 Director responsible for spill response. Except as otherwise specifically provided in this chapter or other law, the director has the primary authority, in conformance with the state-wide master oil and hazardous substance spill prevention and contingency plan adopted pursuant to RCW 90.56.060 and any applicable contingency plans prepared pursuant to this chapter and chapter 88.46 RCW, to oversee prevention, abatement, response, containment, and cleanup efforts with regard to any oil or hazardous substance spill in the navigable waters of the state. The director is the head of the state incident command system in response to a spill of oil or hazardous substances and shall coordinate the response efforts of all state agencies and local emergency response personnel. If a discharge of oil or hazardous substances is subject to the national contingency plan, in responding to the discharge, the director shall to the greatest extent practicable act in accordance with the national contingency plan and cooperate with the federal on-scene coordinator or other federal agency or official exercising authority under the national contingency plan. [1991 c 200 § 103.]

90.56.030 Powers and duties. The powers, duties, and functions conferred by this chapter shall be exercised by the department of ecology and shall be deemed an essential government function in the exercise of the police power of the state. Such powers, duties, and functions of the department shall extend to all waters under the jurisdiction of the state. [1991 c 200 § 104; 1971 ex.s. c 180 § 2. Formerly RCW 90.48.370.]

90.56.040 Authority supplemental. This chapter grants authority to the department which is supplemental to and in no way reduces or otherwise modifies the powers granted to the department by other statutes. [1991 c 200 § 105; 1987 c 109 § 153; 1969 ex.s. c 133 § 11. Formerly RCW 90.48.365.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.56.050 Rules. The department may adopt rules including but not limited to the following matters:

- (1) Procedures and methods of reporting discharges and other occurrences prohibited by this chapter;
- (2) Procedures, methods, means, and equipment to be used by persons subject to regulation by this chapter and such rules may prescribe the times, places, and methods of transfer of oil;
- (3) Coordination of procedures, methods, means, and equipment to be used in the removal of oil;
- (4) Development and implementation of criteria and plans to meet oil spills of various kinds and degrees;
- (5) When and under what circumstances, if any, chemical agents, such as coagulants, dispersants, and bioremediation, may be used in response to an oil spill;
- (6) The disposal of oil recovered from a spill; and
- (7) Such other rules and regulations as the exigencies of any condition may require or such as may be reasonably necessary to carry out the intent of this chapter. [1991 c 200 § 106; 1971 ex.s. c 180 § 3. Formerly RCW 90.48.380.]

90.56.060 State-wide master oil and hazardous substance spill prevention and contingency plan. (1) The department shall prepare and annually update a state-wide master oil and hazardous substance spill prevention and contingency plan. In preparing the plan, the department shall consult with an advisory committee representing diverse interests concerned with oil and hazardous substance spills, including the office of marine safety, the United States coast guard, the federal environmental protection agency, state agencies, local governments, port districts, private facilities, environmental organizations, oil companies, shipping companies, containment and cleanup contractors, tow companies, and hazardous substance manufacturers.

(2) The state master plan prepared under this section shall at a minimum:

(a) Take into consideration the elements of oil spill prevention and contingency plans approved or submitted for approval pursuant to this chapter and chapter 88.46 RCW and oil and hazardous substance spill contingency

plans prepared pursuant to other state or federal law or prepared by federal agencies and regional entities;

(b) State the respective responsibilities as established by relevant statutes and rules of each of the following in the prevention of and the assessment, containment, and cleanup of a worst case spill of oil or hazardous substances into the environment of the state: (i) State agencies; (ii) local governments; (iii) appropriate federal agencies; (iv) facility operators; (v) property owners whose land or other property may be affected by the oil or hazardous substance spill; and (vi) other parties identified by the department as having an interest in or the resources to assist in the containment and cleanup of an oil or hazardous substance spill;

(c) State the respective responsibilities of the parties identified in (b) of this subsection in an emergency response;

(d) Identify actions necessary to reduce the likelihood of spills of oil and hazardous substances;

(e) Identify and obtain mapping of environmentally sensitive areas at particular risk to oil and hazardous substance spills; and

(f) Establish an incident command system for responding to oil and hazardous substances spills.

(3) In preparing and updating the state master plan, the department shall:

(a) Consult with federal, provincial, municipal, and community officials, other state agencies, the state of Oregon, and with representatives of affected regional organizations;

(b) Submit the draft plan to the public for review and comment;

(c) Submit to the appropriate standing committees of the legislature for review, not later than November 1 of each year, the plan and any annual revision of the plan; and

(d) Require or schedule unannounced oil spill drills as required by RCW 90.56.260 to test the sufficiency of oil spill contingency plans approved under RCW 90.56.210. [1991 c 200 § 107; 1990 c 116 § 10. Formerly RCW 90.48.378.]

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

90.56.070 Coordination with federal law. In carrying out the purposes of this chapter, including the adoption of rules for contingency plans, the department shall to the greatest extent practicable implement this chapter in a manner consistent with federal law. [1991 c 200 § 108.]

90.56.080 Hazardous substances incident response training and education program. Not later than twelve months after May 15, 1991, the division of fire protection services shall establish and manage the Washington oil and hazardous substances incident response training and education program to provide approved classes in hazardous substance response, taught by trained instructors. To carry out this program, the division of fire protection services shall:

(1) Adopt rules necessary to implement the program;

(2) Establish a training and education program by developing the curriculum to be used in the program in colleges, academies, and other educational institutions;

(3) Provide training to local oil and hazardous materials emergency response personnel; and

(4) Establish and collect admission fees and other fees that may be necessary to the program. [1991 c 200 § 109.]

90.56.090 Small spill prevention education program.

(1) The Washington sea grant program, in consultation with the department, shall develop and conduct a voluntary spill prevention education program that targets small spills from commercial fishing vessels, ferries, cruise ships, ports, and marinas. Washington sea grant shall coordinate the spill prevention education program with recreational boater education performed by the state parks and recreation commission.

(2) The spill prevention education program shall illustrate ways to reduce oil contamination of bilge water, accidental spills of hydraulic fluid and other hazardous substances during routine maintenance, and reduce spillage during refueling. The program shall illustrate proper disposal of oil and hazardous substances and promote strategies to meet shoreside oil and hazardous substance handling, and disposal needs of the targeted groups. The program shall include a series of training workshops and the development of educational materials. [1991 c 200 § 110.]

90.56.100 Washington wildlife rescue coalition.

(1) The Washington wildlife rescue coalition shall be established for the purpose of coordinating the rescue and rehabilitation of wildlife injured or endangered by oil spills or the release of other hazardous substances into the environment.

(2) The Washington wildlife rescue coalition shall be composed of:

(a) A representative of the department of wildlife designated by the director of wildlife. The department of wildlife shall be designated as lead agency in the operations of the coalition. The coalition shall be chaired by the representative from the department of wildlife;

(b) A representative of the department of ecology designated by the director;

(c) A representative of the department of community development emergency management program designated by the director of community development;

(d) A licensed veterinarian, with experience and training in wildlife rehabilitation, appointed by the veterinary board of governors;

(e) The director of the Washington conservation corps;

(f) A lay person, with training and experience in the rescue and rehabilitation of wildlife appointed by the department; and

(g) A person designated by the legislative authority of the county where oil spills or spills of other hazardous substances may occur. This member of the coalition shall serve on the coalition until wildlife rescue and rehabilitation is completed in that county. The completion

of any rescue or rehabilitation project shall be determined by the director of wildlife.

(3) The duties of the Washington wildlife rescue coalition shall be to:

(a) Develop an emergency mobilization plan to rescue and rehabilitate waterfowl and other wildlife that are injured or endangered by an oil spill or the release of other hazardous substances into the environment;

(b) Develop and maintain a resource directory of persons, governmental agencies, and private organizations that may provide assistance in an emergency rescue effort;

(c) Provide advance training and instruction to volunteers in rescuing and rehabilitating waterfowl and wildlife injured or endangered by oil spills or the release of other hazardous substances into the environment. The training may be provided through grants to community colleges or to groups that conduct programs for training volunteers. The coalition representatives from the agencies described in subsection (2) of this section shall coordinate training efforts with the director of the Washington conservation corps and work to provide training opportunities for young citizens;

(d) Obtain and maintain equipment and supplies used in emergency rescue efforts;

(e) Report to the appropriate standing committees of the legislature on the progress of the coalition's efforts and detail future funding options necessary for the implementation of this section and RCW 90.56.110. The coalition shall report by January 30, 1991.

(4)(a) Expenses for the coalition may be provided by the coastal protection fund administered according to RCW 90.48.400.

(b) The commission is encouraged to seek grants, gifts, or donations from private sources in order to carry out the provisions of this section and RCW 90.56.110. Any private funds donated to the commission shall be deposited into the wildlife rescue account hereby created within the wildlife fund as authorized under Title 77 RCW. [1990 c 116 § 12. Formerly RCW 90.48.387.]

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

90.56.110 Rehabilitation of wildlife—Rules. The department of wildlife may adopt rules including, but not limited to, the following:

(1) Procedures and methods of handling and caring for waterfowl or other wildlife affected by spills of oil and other hazardous materials;

(2) The certification of persons trained in the removal of pollutants from waterfowl or other wildlife;

(3) Development of procedures with respect to removal of oil and other hazardous substances from waterfowl or other wildlife;

(4) The establishment of training exercises, courses, and other training procedures as necessary;

(5) Such other rules as may be reasonably necessary to carry out the intent of RCW 90.56.100. [1990 c 116 § 13. Formerly RCW 90.48.388.]

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

90.56.200 Prevention plans. (1) The owner or operator for each onshore and offshore facility shall prepare and submit to the department an oil spill prevention plan in conformance with the requirements of this chapter. The plans shall be submitted to the department in the time and manner directed by the department, but not later than January 1, 1993. The spill prevention plan may be consolidated with a spill contingency plan submitted pursuant to RCW 90.56.210. The department may accept plans prepared to comply with other state or federal law as spill prevention plans to the extent those plans comply with the requirements of this chapter. The department, by rule, shall establish standards for spill prevention plans. The rules shall be adopted not later than July 1, 1992.

(2) The spill prevention plan for an onshore or offshore facility shall:

(a) Establish compliance with the federal oil pollution act of 1990, if applicable, and financial responsibility requirements under federal and state law;

(b) Certify that supervisory and other key personnel in charge of transfer, storage, and handling of oil have received certification pursuant to RCW 90.56.220;

(c) Certify that the facility has an operations manual required by RCW 90.56.230;

(d) Certify the implementation of alcohol and drug use awareness programs;

(e) Describe the facility's maintenance and inspection program and contain a current maintenance and inspection record of the storage and transfer facilities and related equipment;

(f) Describe the facility's alcohol and drug treatment programs;

(g) Describe spill prevention technology that has been installed, including overflow alarms, automatic overflow cut-off switches, secondary containment facilities, and storm water retention, treatment, and discharge systems;

(h) Describe any discharges of oil to the land or the water of more than twenty-five barrels in the prior five years and the measures taken to prevent a reoccurrence;

(i) Describe the procedures followed by the facility to contain and recover any oil that spills during the transfer of oil to or from the facility;

(j) Provide for the incorporation into the facility during the period covered by the plan of those measures that will provide the best achievable protection for the public health and the environment; and

(k) Include any other information reasonably necessary to carry out the purposes of this chapter required by rules adopted by the department.

(3) The department shall only approve a prevention plan if it provides the best achievable protection from damages caused by the discharge of oil into the waters of the state and if it determines that the plan meets the requirements of this section and rules adopted by the department.

(4) Upon approval of a prevention plan, the department shall provide to the person submitting the plan a statement indicating that the plan has been approved, the facilities covered by the plan, and other information the department determines should be included.

(5) The approval of a prevention plan shall be valid for five years. An owner or operator of a facility shall notify the department in writing immediately of any significant change of which it is aware affecting its prevention plan, including changes in any factor set forth in this section or in rules adopted by the department. The department may require the owner or operator to update a prevention plan as a result of these changes.

(6) The department by rule shall require prevention plans to be reviewed, updated, if necessary, and resubmitted to the department at least once every five years.

(7) Approval of a prevention plan by the department does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under this chapter or other state law.

(8) This section does not authorize the department to modify the terms of a collective bargaining agreement. [1991 c 200 § 201.]

90.56.210 Contingency plans. (1) Each onshore and offshore facility shall have a contingency plan for the containment and cleanup of oil spills from the facility into the waters of the state and for the protection of fisheries and wildlife, natural resources, and public and private property from such spills. The department shall by rule adopt and periodically revise standards for the preparation of contingency plans. The department shall require contingency plans, at a minimum, to meet the following standards:

(a) Include full details of the method of response to spills of various sizes from any facility which is covered by the plan;

(b) Be designed to be capable in terms of personnel, materials, and equipment, of promptly and properly, to the maximum extent practicable, as defined by the department removing oil and minimizing any damage to the environment resulting from a worst case spill;

(c) Provide a clear, precise, and detailed description of how the plan relates to and is integrated into relevant contingency plans which have been prepared by cooperatives, ports, regional entities, the state, and the federal government;

(d) Provide procedures for early detection of oil spills and timely notification of such spills to appropriate federal, state, and local authorities under applicable state and federal law;

(e) State the number, training preparedness, and fitness of all dedicated, repositioned personnel assigned to direct and implement the plan;

(f) Incorporate periodic training and drill programs to evaluate whether personnel and equipment provided under the plan are in a state of operational readiness at all times;

(g) Describe important features of the surrounding environment, including fish and wildlife habitat, environmentally sensitive areas, and public facilities. The departments of ecology, fisheries, wildlife, and natural resources, upon request, shall provide information that they have available to assist in preparing this description;

(h) State the means of protecting and mitigating effects on the environment, including fish, marine mammals, and other wildlife, and ensure that implementation of the plan does not pose unacceptable risks to the public or the environment;

(i) Provide arrangements for the repositioning of oil spill containment and cleanup equipment and trained personnel at strategic locations from which they can be deployed to the spill site to promptly and properly remove the spilled oil;

(j) Provide arrangements for enlisting the use of qualified and trained cleanup personnel to implement the plan;

(k) Provide for disposal of recovered spilled oil in accordance with local, state, and federal laws;

(l) Until a spill prevention plan has been submitted pursuant to RCW 90.56.200, state the measures that have been taken to reduce the likelihood that a spill will occur, including but not limited to, design and operation of a facility, training of personnel, number of personnel, and backup systems designed to prevent a spill;

(m) State the amount and type of equipment available to respond to a spill, where the equipment is located, and the extent to which other contingency plans rely on the same equipment; and

(n) If the department has adopted rules permitting the use of dispersants, the circumstances, if any, and the manner for the application of the dispersants in conformance with the department's rules.

(2)(a) The following shall submit contingency plans to the department within six months after the department adopts rules establishing standards for contingency plans under subsection (1) of this section:

(i) Onshore facilities capable of storing one million gallons or more of oil; and

(ii) Offshore facilities.

(b) Contingency plans for all other onshore and offshore facilities shall be submitted to the department within eighteen months after the department has adopted rules under subsection (1) of this section. The department may adopt a schedule for submission of plans within the eighteen-month period.

(3)(a) The owner or operator of a facility shall submit the contingency plan for the facility.

(b) A person who has contracted with a facility to provide containment and cleanup services and who meets the standards established pursuant to RCW 90.56.240, may submit the plan for any facility for which the person is contractually obligated to provide services. Subject to conditions imposed by the department, the person may submit a single plan for more than one facility.

(4) A contingency plan prepared for an agency of the federal government or another state that satisfies the requirements of this section and rules adopted by the department may be accepted by the department as a contingency plan under this section. The department shall assure that to the greatest extent possible, requirements for contingency plans under this section are consistent with the requirements for contingency plans under federal law.

(5) In reviewing the contingency plans required by this section, the department shall consider at least the following factors:

(a) The adequacy of containment and cleanup equipment, personnel, communications equipment, notification procedures and call down lists, response time, and logistical arrangements for coordination and implementation of response efforts to remove oil spills promptly and properly and to protect the environment;

(b) The nature and amount of vessel traffic within the area covered by the plan;

(c) The volume and type of oil being transported within the area covered by the plan;

(d) The existence of navigational hazards within the area covered by the plan;

(e) The history and circumstances surrounding prior spills of oil within the area covered by the plan;

(f) The sensitivity of fisheries and wildlife and other natural resources within the area covered by the plan;

(g) Relevant information on previous spills contained in on-scene coordinator reports prepared by the department; and

(h) The extent to which reasonable, cost-effective measures to prevent a likelihood that a spill will occur have been incorporated into the plan.

(6) The department shall approve a contingency plan only if it determines that the plan meets the requirements of this section and that, if implemented, the plan is capable, in terms of personnel, materials, and equipment, of removing oil promptly and properly and minimizing any damage to the environment.

(7) The approval of the contingency plan shall be valid for five years. Upon approval of a contingency plan, the department shall provide to the person submitting the plan a statement indicating that the plan has been approved, the facilities or vessels covered by the plan, and other information the department determines should be included.

(8) An owner or operator of a facility shall notify the department in writing immediately of any significant change of which it is aware affecting its contingency plan, including changes in any factor set forth in this section or in rules adopted by the department. The department may require the owner or operator to update a contingency plan as a result of these changes.

(9) The department by rule shall require contingency plans to be reviewed, updated, if necessary, and resubmitted to the department at least once every five years.

(10) Approval of a contingency plan by the department does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under this chapter or other state law. [1991 c 200 § 202; 1990 c 116 § 3. Formerly RCW 90.48.371.]

Severability—1990 c 116: "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." [1990 c 116 § 35.]

90.56.220 Facility operation standards. (1) The department by rule shall adopt standards for onshore and

offshore facilities regarding the equipment and operation of the facilities with respect to the transfer, storage, and handling of oil to ensure that the best achievable protection of the public health and the environment is employed at all times. The department shall implement a program to provide for the inspection of all onshore and offshore facilities on a regular schedule to ensure that each facility is in compliance with the standards.

(2) The department shall adopt rules for certification of supervisory and other key personnel in charge of the transfer, storage, and handling of oil at onshore and offshore facilities. The rules shall include, but are not limited to:

(a) Minimum training requirements for all facility workers involved in the transfer, storage, and handling of oil at a facility;

(b) Provisions for periodic renewal of certificates for supervisory and other key personnel involved in the transfer, storage, and handling of oil at the facility; and

(c) Continuing education requirements.

(3) The rules adopted by the department shall not conflict with or modify standards imposed pursuant to federal or state laws regulating worker safety. [1991 c 200 § 203.]

90.56.230 Operations manuals. (1) Each owner or operator of an onshore or offshore facility shall prepare an operations manual describing equipment and procedures involving the transfer, storage, and handling of oil that the operator employs or will employ for best achievable protection for the public health and the environment and to prevent oil spills in the navigable waters. The operations manual shall also describe equipment and procedures required for all vessels to or from which oil is transferred through use of the facility. The operations manual shall be submitted to the department for approval.

(2) Every existing onshore and offshore facility shall prepare and submit to the department its operations manual within eighteen months after the department has adopted rules governing the content of the manual.

(3) The department shall approve an operations manual for an onshore or offshore facility if the manual complies with the rules adopted by the department. If the department determines a manual does not comply with the rules, it shall provide written reasons for the decision. The owner or operator shall resubmit the manual within ninety days of notification of the reasons for noncompliance, responding to the reasons and incorporating any suggested modifications.

(4) The approval of an operations manual shall be valid for five years. The owner or operator of the facility shall notify the department in writing immediately of any significant change in its operations affecting its operations manual. The department may require the owner or operator to modify its operations manual as a result of these changes.

(5) All equipment and operations of an operator's onshore or offshore facility shall be maintained and carried out in accordance with the facility's operations manual. The owner or operator of the facility shall ensure that all

covered vessels docked at an onshore or offshore facility comply with the terms of the operations manual for the facility. [1991 c 200 § 204.]

90.56.240 Standards for cleanup and containment services contractors. The department shall by rule establish standards for persons who contract to provide cleanup and containment services under contingency plans approved under RCW 90.56.210. [1990 c 116 § 4. Formerly RCW 90.48.372.]

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

90.56.250 Index of prevention plans and contingency plans—Equipment inventory. The department shall annually publish an index of available, up-to-date descriptions of prevention plans and contingency plans for oil spills submitted and approved pursuant to RCW 90.56.200, 90.56.210, 88.46.040, and 88.46.060 and an inventory of equipment available for responding to such spills. [1991 c 200 § 205; 1990 c 116 § 5. Formerly RCW 90.48.373.]

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

90.56.260 Adequacy of contingency plans—Practice drills—Report. The department shall by rule adopt procedures to determine the adequacy of contingency plans approved under RCW 90.56.210. The rules shall require random practice drills without prior notice that will test the adequacy of the responding entities. The rules may provide for unannounced practice drills of individual contingency plans. The department shall review and publish a report on the drills, including an assessment of response time and available equipment and personnel compared to those listed in the contingency plans relying on the responding entities, and requirements, if any, for changes in the plans or their implementation. The department may require additional drills and changes in arrangements for implementing approved plans which are necessary to ensure their effective implementation. [1990 c 116 § 6. Formerly RCW 90.48.374.]

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

90.56.270 Enforcement of contingency plans. (1) The provisions of contingency plans approved by the department under RCW 90.56.210 and prevention plans approved by the department pursuant to RCW 90.56.200 shall be legally binding on those persons submitting them to the department and on their successors, assigns, agents, and employees. The superior court shall have jurisdiction to restrain a violation of, compel specific performance of, or otherwise to enforce such plans upon application by the department. The department may issue an order pursuant to chapter 34.05 RCW requiring compliance with a contingency plan or a prevention plan and may impose administrative penalties under RCW 43.21B.300 for failure to comply with a plan. An order

under this section is not subject to review by the pollution control hearings board as provided in RCW 43.21B.110.

(2)(a) Any person responsible or potentially responsible for a discharge, all of the agents and employees of that person, the operators of all vessels docked at an onshore or offshore facility that is a source of a discharge, and all state and local agencies shall carry out response and cleanup operations in accordance with applicable contingency plans, unless directed otherwise by the director or the coast guard. Except as provided in (b) of this subsection, the responsible party, potentially responsible parties, their agents and employees, the operators of all vessels docked at an onshore or offshore facility that is the source of the discharge, and all state and local agencies shall carry out whatever direction is given by the director in connection with the response, containment, and cleanup of the spill, if the directions are not in direct conflict with the directions of the coast guard.

(b) If a responsible party or potentially responsible party reasonably, and in good faith, believes that the directions or orders given by the director pursuant to (a) of this subsection will substantially endanger the public safety or the environment, the party may refuse to act in compliance with the orders or directions of the director. The responsible party or potentially responsible party shall state, at the time of the refusal, the reasons why the party refuses to follow the orders or directions of the director. The responsible party or potentially responsible party shall give the director written notice of the reasons for the refusal within forty-eight hours of refusing to follow the orders or directions of the director. In any civil or criminal proceeding commenced pursuant to this section, the burden of proof shall be on the responsible party or potentially responsible party to demonstrate, by clear and convincing evidence, why the refusal to follow the orders or directions of the director was justified under the circumstances. [1991 c 200 § 206; 1990 c 116 § 7. Formerly RCW 90.48.375.]

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

90.56.280 Duty to notify coast guard and division of emergency management of discharge. It shall be the duty of any person discharging oil or hazardous substances or otherwise causing, permitting, or allowing the same to enter the waters of the state, unless the discharge or entry was expressly authorized by the department prior thereto or authorized by operation of law under RCW 90.48.200, to immediately notify the coast guard and the division of emergency management. The notice to the division of emergency management within the department of community development shall be made to the division's twenty-four hour state-wide toll-free number established for reporting emergencies. [1990 c 116 § 24; 1987 c 109 § 152; 1969 ex.s. c 133 § 9. Formerly RCW 90.48.360.]

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.56.300 Unlawful operation of facility—Criminal penalties. (1) Except as provided in subsection (2) of this section, it shall be unlawful for the owner or operator to knowingly and intentionally operate in this state or on the waters of this state an onshore or offshore facility without an approved contingency plan or an approved prevention plan as required by this chapter, or financial responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990. The first conviction under this section shall be a gross misdemeanor under chapter 9A.20 RCW. A second or subsequent conviction shall be a class C felony under chapter 9A.20 RCW.

(2) It shall not be unlawful for the owner or operator to operate an onshore or offshore facility if:

(a) The facility is not required to have a contingency plan, spill prevention plan, or financial responsibility; or

(b) All required plans have been submitted to the department as required by RCW 90.56.210 and rules adopted by the department and the department is reviewing the plan and has not denied approval.

(3) A person may rely on a copy of the statement issued by the department pursuant to RCW 90.56.210(7) as evidence that a facility has an approved contingency plan and the statement issued pursuant to *RCW 90.56.200(5) that a facility has an approved prevention plan. [1991 c 200 § 301; 1990 c 116 § 8. Formerly RCW 90.48.376.]

*Reviser's note: The reference to RCW 90.56.200(5) appears to be erroneous. Reference to RCW 90.56.200(4) was apparently intended.

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

90.56.310 Operation of a facility or vessel without contingency or prevention plan or financial responsibility—Civil penalty. (1) Except as provided in subsection (3) of this section, it shall be unlawful:

(a) For the owner or operator to operate an onshore or offshore facility without an approved contingency plan as required under RCW 90.56.210, a spill prevention plan required by RCW 90.56.200, or financial responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990; or

(b) For the owner or operator of an onshore or offshore facility to accept cargo or passengers from a covered vessel that does not have an approved contingency plan or an approved prevention plan required under chapter 88.46 RCW or financial responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990.

(2) The department may notify the secretary of state to suspend the business license of any onshore or offshore facility or other person that is in violation of this section. The department may assess a civil penalty under RCW 43.21B.300 of up to one hundred thousand dollars against any person who is in violation of this section. Each day that a facility or person is in violation of this section shall be considered a separate violation.

(3) It shall not be unlawful for a facility or other person to operate or accept cargo or passengers from a covered vessel if:

(a) A contingency plan, a prevention plan, or financial responsibility is not required for the facility; or

(b) A contingency and prevention plan has been submitted to the department as required by this chapter and rules adopted by the department and the department is reviewing the plan and has not denied approval.

(4) Any person may rely on a copy of the statement issued by the department pursuant to RCW 90.56.210(7) as evidence that the facility has an approved contingency plan and the statement issued pursuant to *RCW 90.56.200(5) as evidence that the facility has an approved spill prevention plan. Any person may rely on a copy of the statement issued by the office to RCW 88.46.060 as evidence that the vessel has an approved contingency plan and the statement issued pursuant to RCW 88.46.040 as evidence that the vessel has an approved prevention plan. [1991 c 200 § 302; 1990 c 116 § 9. Formerly RCW 90.48.377.]

*Reviser's note: The reference to RCW 90.56.200(5) appears to be erroneous. Reference to RCW 90.56.200(4) was apparently intended.

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

90.56.320 Unlawful for oil to enter waters—Exceptions. It shall be unlawful, except under the circumstances hereafter described in this section, for oil to enter the waters of the state from any ship or any fixed or mobile facility or installation located offshore or onshore whether publicly or privately operated, regardless of the cause of the entry or fault of the person having control over the oil, or regardless of whether it be the result of intentional or negligent conduct, accident or other cause. This section shall not apply to discharges of oil in the following circumstances:

(1) The person discharging was expressly authorized to do so by the department prior to the entry of the oil into state waters; or

(2) The person discharging was authorized to do so by operation of law as provided in RCW 90.48.200. [1990 c 116 § 17; 1987 c 109 § 146; 1970 ex.s. c 88 § 2; 1969 ex.s. c 133 § 1. Formerly RCW 90.48.320.]

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.56.330 Additional penalties. Except as otherwise provided in *RCW 90.48.383, any person who negligently discharges oil, or causes or permits the entry of the same, shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to twenty thousand dollars for every such violation, and for each day the spill poses risks to the environment as determined by the director. Any person who intentionally or recklessly discharges or causes or permits the entry of oil into the waters of the state shall incur, in addition to any other penalty authorized by law, a penalty of up to one hundred thousand dollars for every such violation and

for each day the spill poses risks to the environment as determined by the director. The amount of the penalty shall be determined by the director after taking into consideration the gravity of the violation, the previous record of the violator in complying, or failing to comply, with the provisions of chapter 90.48 RCW, the speed and thoroughness of the collection and removal of the oil, and such other considerations as the director deems appropriate. Every 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 penalty herein provided for. The penalty herein provided for shall be imposed pursuant to RCW 43.21B.300. [1990 c 116 § 20; 1989 c 388 § 9; 1987 c 109 § 20; 1985 c 316 § 7; 1970 ex.s. c 88 § 9; 1969 ex.s. c 133 § 7. Formerly RCW 90.48.350.]

*Reviser's note: RCW 90.48.383 was repealed by 1991 c 200 § 1116.

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

Intent—Application—Captions—Severability—1989 c 388: See notes following RCW 90.56.010.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.56.340 Duty to remove oil. It shall be the obligation of any person owning or having control over oil entering waters of the state in violation of RCW 90.56.320 to immediately collect and remove the same. If it is not feasible to collect and remove, said person shall take all practicable actions to contain, treat and disperse the same. The director shall prohibit or restrict the use of any chemicals or other dispersant or treatment materials proposed for use under this section whenever it appears to the director that use thereof would be detrimental to the public interest. [1991 c 200 § 303; 1970 ex.s. c 88 § 3; 1969 ex.s. c 133 § 2. Formerly RCW 90.48.325.]

90.56.350 Investigation, removal, containment, treatment, or dispersal of oil and hazardous substances—Record of expenses. The department shall take all actions necessary to respond to a substantial threat of a discharge of oil or hazardous substances into the waters of this state or to collect, investigate, perform surveillance over, remove, contain, treat, or disperse oil or hazardous substances discharged into waters of the state. 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 authority granted hereunder shall be limited to projects and activities which are designed to protect the public interest or public property. The department may use staff, equipment, and material under its control, or contract with others, to carry out its responsibilities under this section. [1990 c 116 § 21; 1987 c 109 § 147; 1970 ex.s. c 88 § 4; 1969 ex.s. c 133 § 3. Formerly RCW 90.48.330.]

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.56.360 Liability for expenses. Any person who unlawfully discharges oil or hazardous substances into the waters of the state or who poses a substantial threat of discharging oil or hazardous substances into the waters of the state shall be responsible for the necessary expenses incurred by the state in carrying out a project or activity authorized under RCW 90.56.350. [1990 c 116 § 22; 1970 ex.s. c 88 § 5; 1969 ex.s. c 133 § 4. Formerly RCW 90.48.335.]

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

90.56.370 Strict liability of owner or controller of oil—Exceptions. (1) Any person owning oil or having control over oil that enters the waters of the state in violation of RCW 90.56.320 shall be strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by such entry.

(2) In any action to recover damages resulting from the discharge of oil in violation of RCW 90.56.320, the owner or person having control over the oil shall be relieved from strict liability, without regard to fault, if that person can prove that the discharge was caused solely by:

- (a) An act of war or sabotage;
- (b) An act of God;
- (c) Negligence on the part of the United States government; or
- (d) Negligence on the part of the state of Washington.

(3) The liability established in this section shall in no way affect the rights which (a) the owner or other person having control over the oil may have against any person whose acts may in any way have caused or contributed to the discharge of oil or (b) the state of Washington may have against any person whose actions may have caused or contributed to the discharge of oil.

(4) The chapter 116, Laws of 1990 changes to subsection (2) of this section requiring the defenses in that subsection to be the sole causes of the discharge, and the text of subsection (2)(b) of this section shall apply prospectively and not retroactively after June 7, 1990. [1990 c 116 § 18; 1970 ex.s. c 88 § 6. Formerly RCW 90.48.336.]

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

90.56.380 Liability of others for cleanup expenses. In addition to any cause of action the state may have to recover necessary expenses for the cleanup of oil pursuant to RCW 90.56.340 and 90.56.330, and except as otherwise provided in *RCW 90.48.383, any other person causing the entry of oil shall be directly liable to the state for the necessary expenses of oil cleanup arising from such entry and the state shall have a cause of action to recover from any or all of said persons. Except as otherwise provided in *RCW 90.48.383, any person liable for cost of oil cleanup as provided in RCW 90.56.340

and 90.56.330 shall have a cause of action to recover for costs of cleanup from any other person causing the entry of oil into the waters of the state including any amount recoverable by the state as necessary expenses under RCW 90.56.330. [1990 c 116 § 19; 1970 ex.s. c 88 § 7. Formerly RCW 90.48.338.]

*Reviser's note: RCW 90.48.383 was repealed by 1991 c 200 § 1116.

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

90.56.390 Liability for removal costs. (1)(a) Notwithstanding any other provision of law, a person is not liable for removal costs or damages that result from actions taken or omitted to be taken in the course of rendering care, assistance, or advice consistent with the national contingency plan or as otherwise directed by the federal on-scene coordinator or by the official within the department with responsibility for oil spill response. This subsection (1)(a) does not apply:

- (i) To a responsible party;
- (ii) With respect to personal injury or wrongful death; or
- (iii) If the person is grossly negligent or engages in willful misconduct.

(b) A responsible party is liable for any removal costs and damages that another person is relieved of under (a) of this subsection.

(c) Nothing in this section affects the liability of a responsible party for oil spill response under state law.

(2) For the purposes of this section:

(a) "Damages" means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or related to the discharge or threatened discharge of oil.

(b) "Discharge" means any emission other than natural seepage, intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(c) "Federal on-scene coordinator" means the federal official predesignated by the United States environmental protection agency or the United States coast guard to coordinate and direct federal responses under subpart D, or the official designated by the lead agency to coordinate and direct removal under subpart E, of the national contingency plan.

(d) "National contingency plan" means the national contingency plan prepared and published under section 311(d) of the federal water pollution control act (33 U.S.C. Sec. 1321(d)), as amended by the oil pollution act of 1990 (P.L. 101-380, 104 Stat. 484 (1990)).

(e) "Oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

(f) "Person" means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body.

(g) "Removal costs" means the costs of removal that are incurred after a discharge of oil has occurred or, in

any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident.

(h) "Responsible party" means a person liable under RCW 90.56.370. [1991 c 200 § 304.]

90.56.400 Department investigation of circumstances of entry of oil—Order for reimbursement of expenses—Modification—Action to recover necessary expenses. The department shall investigate each activity or project conducted under RCW 90.56.350 to determine, if possible, the circumstances surrounding the entry of oil into waters of the state and the person or persons allowing said entry or responsible for the act or acts which result in said entry. Whenever it appears to the department, after investigation, that a specific person or persons are responsible for the necessary expenses incurred by the state pertaining to a project or activity as specified in RCW 90.56.360, the department shall notify said person or persons by appropriate order. The department may not issue an order pertaining to a project or activity which was completed more than five years prior to the date of the proposed issuance of the order. The order shall state the findings of the department, the amount of necessary expenses incurred in conducting the project or activity, and a notice that said amount is due and payable immediately upon receipt of said order. The department may, upon application from the recipient of an order received within thirty days from the receipt of the order, reduce or set aside in its entirety the amount due and payable, when it appears from the application, and from any further investigation the department may desire to undertake, that a reduction or setting aside is just and fair under all the circumstances. If the amount specified in the order issued by the department notifying said person or persons is not paid within thirty days after receipt of notice imposing the same, or if an application has been made within thirty days as herein provided and the amount provided in the order issued by the department subsequent to such application is not paid within fifteen days after receipt thereof, the attorney general, upon request of the department, shall bring an action on behalf of the state in the superior court of Thurston county or any county in which the person to which the order is directed does business, or in any other court of competent jurisdiction, to recover the amount specified in the final order of the department. No order issued under this section shall be construed as an order within the meaning of RCW 43.21B.310 and shall not be appealable to the hearings board. In any action to recover necessary expenses as herein provided said person shall be relieved from liability for necessary expenses if the person can prove that the oil to which the necessary expenses relate entered the waters of the state by causes set forth in RCW 90.56.320(2). [1991 c 200 § 305; 1987 c 109 § 148; 1985 c 316 § 4; 1970 ex.s. c 88 § 10; 1969 ex.s. c 133 § 5. Formerly RCW 90.48.340.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.56.410 Right of entry and access to records pertinent to investigations. The department, through its duly authorized representatives, shall have the power to enter upon any private or public property, including the boarding of any ship, at any reasonable time, and the owner, managing agent, master or occupant of such property shall permit such entry for the purpose of investigating conditions relating to violations or possible violations of this chapter, and to have access to any pertinent records relating to such property, including but not limited to operation and maintenance records and logs. The authority granted herein shall not be construed to require any person to divulge trade secrets or secret processes. The director may issue subpoenas for the production of any books, records, documents, or witnesses in any hearing conducted pursuant to this chapter. [1990 c 116 § 23; 1987 c 109 § 151; 1969 ex.s. c 133 § 8. Formerly RCW 90.48.355.]

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.56.420 Authorized discharges of oil—Permits. Any person who proposes to discharge oil or cause or permit the entry of same into waters of the state shall prior to such discharge obtain permission from the director. The director is authorized to permit the discharge of oil into waters of the state consistent with the pertinent effluent and receiving water standards and treatment requirements established by the department. Permission for industrial or commercial discharges shall be given through the terms of a waste discharge permit issued pursuant to RCW 90.48.180. Permission shall be given in all other cases on a form prescribed by the director. [1987 c 109 § 149; 1970 ex.s. c 88 § 8. Formerly RCW 90.48.343.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.56.450 Marine oversight board—Annual report. (1) The oil marine oversight board is established to provide independent oversight of the actions of the federal government, industry, the department, the office, and other state agencies with respect to oil spill prevention and response for covered vessels and onshore and offshore facilities.

(2)(a) The board may, at its own discretion, study any aspect of oil spill prevention and response for covered vessels and onshore and offshore facilities in the state. The board shall report to the governor and make recommendations to the department and the office on activities of the federal government and industry with respect to oil spill prevention and response for covered vessels and onshore and offshore facilities, including recommendations for the state's response to those actions. The board shall specifically review the need for, and the structure and design of an emergency response system for the Strait of Juan de Fuca and the Pacific coast. The board shall also make recommendations to the legislature and

other state agencies on any provision of this chapter, other state laws, and rules, policies, and guidelines adopted by the department, the office, or, other state agencies relating to the prevention and cleanup of oil spills into the waters of the state from covered vessels and onshore and offshore facilities.

(b) To minimize duplication of effort, reviews conducted by the board shall be coordinated with related activities of the federal government, the department, the office, and other appropriate state and international entities. The Puget Sound water quality authority shall ensure that studies and recommendations by the board shall not be duplicated by any recommendations prepared and adopted pursuant to chapter 90.70 RCW after May 15, 1991.

(c) The board shall evaluate and report at least annually to the governor and the appropriate standing committees of the legislature on oil spill prevention, response, and preparedness programs within the state for covered vessels and onshore and offshore facilities.

(3) There shall be five members of the board appointed by the governor for terms of five years. Members' terms shall be staggered. The members of the board shall be representative of the public and shall have demonstrable knowledge of environmental protection and the study of marine ecosystems, or have familiarity with marine transportation systems.

(4) A chair shall be selected by majority vote of the board. The board shall meet as often as required, but at least four times per year. Members shall be reimbursed for travel and expenses for attending meetings as provided in RCW 43.03.050 and 43.03.060.

(5) The chair may hire staff as necessary for the board to fulfill its responsibilities. [1991 c 200 § 501.]

90.56.500 Oil spill response account. The state oil spill response account is created in the state treasury. All receipts from RCW 82.23B.020(1) shall be deposited in the account. All costs reimbursed to the state by a responsible party or any other person for responding to a spill of oil shall also be deposited in the account. Moneys in the account shall be spent only after appropriation. The account is subject to allotment procedures under chapter 43.88 RCW. The account shall be used exclusively to pay for the costs associated with the response to spills of crude oil or petroleum products into the navigable waters of the state. Payment of response costs under this section shall be limited to spills which the director has determined are likely to exceed fifty thousand dollars. Before expending moneys from the account, the director shall make reasonable efforts to obtain funding for response costs from the person responsible for the spill and from other sources, including the federal government. Reimbursement for response costs shall be allowed only for costs which are not covered by funds appropriated to the agencies responsible for response activities. Costs associated with the response to spills of crude oil or petroleum products shall include:

(1) Natural resource damage assessment and related activities;

(2) Spill related response, containment, wildlife rescue, cleanup, disposal, and associated costs;

(3) Interagency coordination and public information related to a response; and

(4) Appropriate travel, goods and services, contracts, and equipment. [1991 c 200 § 805.]

90.56.510 Oil spill administration account. The state oil spill administration account is created in the state treasury. All receipts from RCW 82.23B.020(2) shall be deposited in the account. Moneys from the account may be spent only after appropriation. The account is subject to allotment procedures under chapter 43.88 RCW. On July 1 of each odd-numbered year, if receipts deposited in the account from the tax imposed by RCW 82.23B.020(2) for the previous fiscal biennium exceed the amount appropriated from the account for the previous fiscal biennium, the state treasurer shall transfer the amount of receipts exceeding the appropriation to the oil spill response account. If, on the first day of any calendar month, the balance of the spill response account is greater than twenty-five million dollars and the balance of the administration account exceeds the unexpended appropriation for the current biennium, then the tax under RCW 82.23B.020(2) shall be suspended on the first day of the next calendar month until the beginning of the following biennium, provided that the tax shall not be suspended during the last six months of the biennium. If the tax imposed under RCW 82.23B.020(2) is suspended during two consecutive biennia, the department shall by November 1st after the end of the second biennium, recommend to the appropriate standing committees an adjustment in the tax rate. For the period 1991-93 the state treasurer may transfer funds from the oil spill response account to the oil spill administration account in amounts necessary to support appropriations made from the oil spill administration account in the omnibus appropriations act. Expenditures from the oil spill administration account shall be used exclusively for the administrative costs related to the purposes of this chapter, and chapters 90.48, 88.40, and 88.46 RCW. Costs of administration include the costs of:

(1) Routine responses not covered under RCW 90.56.500;

(2) Management and staff development activities;

(3) Development of rules and policies and the state-wide plan provided for in RCW 90.56.060;

(4) Facility and vessel plan review and approval, drills, inspections, investigations, enforcement, and litigation;

(5) Interagency coordination and public outreach and education;

(6) Collection and administration of the tax provided for in chapter 82.23B RCW; and

(7) Appropriate travel, goods and services, contracts, and equipment. [1991 c 200 § 806.]

90.56.520 Report of authorized expenditures—Expiration of section. The director of the department of ecology shall submit a report to the appropriate standing committees of the legislature by November 1 of each

even-numbered year showing detailed information regarding expenditures authorized by the director under RCW 90.56.500. The report shall include, but not be limited to:

(1) The total amount spent for each response for which the director has approved expenditures and the amount paid for from the *spill prevention and response account;

(2) The amount recovered from a responsible party for each spill;

(3) The amount of time between a spill and the time a responsible party assumes responsibility for the response costs related to a spill;

(4) The number of incidents for which the director has determined that the responsible party or another source was available to pay for the response; and

(5) A recommendation concerning the need to continue collecting the tax under RCW 82.23B.020(1).

This section shall expire December 31, 1996. [1991 c 200 § 807.]

*Reviser's note: This reference apparently should be to the oil spill response account created in RCW 90.56.500.

90.56.900 Construction—Appeal not to stay order, rule, or regulation. This chapter, being necessary for the general welfare, the public health, and the public safety of the state and its inhabitants, shall be liberally construed to effect their purposes. No rule, regulation, or order of the department shall be stayed pending appeal under this chapter. [1991 c 200 § 1107; 1971 ex.s. c 180 § 10. Formerly RCW 90.48.907.]

90.56.901 Effective dates—1991 c 200. (1) Sections 101 through 429, 501 through 706, 805 through 807, 810 through 817, and 901 through 1118 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 15, 1991].

(2) Sections 801 through 804, 808, and 809 of this act shall take effect October 1, 1991. [1991 c 200 § 1119.]

90.56.902 Captions not law. Section headings and part headings as used in this chapter shall constitute no part of the law. [1991 c 200 § 1113.]

90.56.903 Report on implementation. The department of ecology shall report to the appropriate standing committees on the effectiveness of chapter 90.56 RCW, and in particular as to how the chapter has been implemented to complement federal law. A report shall be submitted not later than December 1, 1992, and a second report not later than December 1, 1994. [1991 c 200 § 1109.]

90.56.904 Severability—1991 c 200. 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. [1991 c 200 § 1118.]

Chapter 90.58

SHORELINE MANAGEMENT ACT OF 1971

Sections

90.58.100	Programs as constituting use regulations—Duties when preparing programs and amendments thereto—Program contents.
90.58.140	Development permits—Grounds for granting—Administration by local government, conditions—Applications—Notices—Rescission—When permits not required—Approval when permit for variance or conditional use.

90.58.100 Programs as constituting use regulations—Duties when preparing programs and amendments thereto—Program contents. (1) The master programs provided for in this chapter, when adopted and approved by the department, as appropriate, shall constitute use regulations for the various shorelines of the state. In preparing the master programs, and any amendments thereto, the department and local governments shall to the extent feasible:

(a) Utilize a systematic interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts;

(b) Consult with and obtain the comments of any federal, state, regional, or local agency having any special expertise with respect to any environmental impact;

(c) Consider all plans, studies, surveys, inventories, and systems of classification made or being made by federal, state, regional, or local agencies, by private individuals, or by organizations dealing with pertinent shorelines of the state;

(d) Conduct or support such further research, studies, surveys, and interviews as are deemed necessary;

(e) Utilize all available information regarding hydrology, geography, topography, ecology, economics, and other pertinent data;

(f) Employ, when feasible, all appropriate, modern scientific data processing and computer techniques to store, index, analyze, and manage the information gathered.

(2) The master programs shall include, when appropriate, the following:

(a) An economic development element for the location and design of industries, transportation facilities, port facilities, tourist facilities, commerce and other developments that are particularly dependent on their location on or use of the shorelines of the state;

(b) A public access element making provision for public access to publicly owned areas;

(c) A recreational element for the preservation and enlargement of recreational opportunities, including but not limited to parks, tidelands, beaches, and recreational areas;

(d) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other public utilities and facilities, all correlated with the shoreline use element;

(e) A use element which considers the proposed general distribution and general location and extent of the

use on shorelines and adjacent land areas for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public buildings and grounds, and other categories of public and private uses of the land;

(f) A conservation element for the preservation of natural resources, including but not limited to scenic vistas, aesthetics, and vital estuarine areas for fisheries and wildlife protection;

(g) An historic, cultural, scientific, and educational element for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values;

(h) An element that gives consideration to the state-wide interest in the prevention and minimization of flood damages; and

(i) Any other element deemed appropriate or necessary to effectuate the policy of this chapter.

(3) The master programs shall include such map or maps, descriptive text, diagrams and charts, or other descriptive material as are necessary to provide for ease of understanding.

(4) Master programs will reflect that state-owned shorelines of the state are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational activities for the public and will give appropriate special consideration to same.

(5) Each master program shall contain provisions to allow for the varying of the application of use regulations of the program, including provisions for permits for conditional uses and variances, to insure that strict implementation of a program will not create unnecessary hardships or thwart the policy enumerated in RCW 90.58.020. Any such varying shall be allowed only if extraordinary circumstances are shown and the public interest suffers no substantial detrimental effect. The concept of this subsection shall be incorporated in the rules adopted by the department relating to the establishment of a permit system as provided in RCW 90.58.140(3). [1991 c 322 § 32; 1971 ex.s. c 286 § 10.]

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

90.58.140 Development permits—Grounds for granting—Administration by local government, conditions—Applications—Notices—Rescission—When permits not required—Approval when permit for variance or conditional use. (1) A development shall not be undertaken on the shorelines of the state unless it is consistent with the policy of this chapter and, after adoption or approval, as appropriate, the applicable guidelines, rules, or master program.

(2) A substantial development shall not be undertaken on shorelines of the state without first obtaining a permit from the government entity having administrative jurisdiction under this chapter.

A permit shall be granted:

(a) From June 1, 1971, until such time as an applicable master program has become effective, only when the development proposed is consistent with: (i) The policy

of RCW 90.58.020; and (ii) after their adoption, the guidelines and rules of the department; and (iii) so far as can be ascertained, the master program being developed for the area;

(b) After adoption or approval, as appropriate, by the department of an applicable master program, only when the development proposed is consistent with the applicable master program and the provisions of chapter 90.58 RCW.

(3) The local government shall establish a program, consistent with rules adopted by the department, for the administration and enforcement of the permit system provided in this section. The administration of the system so established shall be performed exclusively by the local government.

(4) Except as otherwise specifically provided in subsection (13) of this section, the local government shall require notification of the public of all applications for permits governed by any permit system established pursuant to subsection (3) of this section by ensuring that:

(a) A notice of such an application is published at least once a week on the same day of the week for two consecutive weeks in a legal newspaper of general circulation within the area in which the development is proposed; and

(b) Additional notice of such an application is given by at least one of the following methods:

(i) Mailing of the notice to the latest recorded real property owners as shown by the records of the county assessor within at least three hundred feet of the boundary of the property upon which the substantial development is proposed;

(ii) Posting of the notice in a conspicuous manner on the property upon which the project is to be constructed; or

(iii) Any other manner deemed appropriate by local authorities to accomplish the objectives of reasonable notice to adjacent landowners and the public.

The notices shall include a statement that any person desiring to submit written comments concerning an application, or desiring to receive a copy of the final order concerning an application as expeditiously as possible after the issuance of the order, may submit the comments or requests for orders to the local government within thirty days of the last date the notice is to be published pursuant to subsection (a) of this subsection. The local government shall forward, in a timely manner following the issuance of an order, a copy of the order to each person who submits a request for the order.

If a hearing is to be held on an application, notices of such a hearing shall include a statement that any person may submit oral or written comments on an application at the hearing.

(5) The system shall include provisions to assure that construction pursuant to a permit will not begin or be authorized until thirty days from the date the final order was filed as provided in subsection (6) of this section; or until all review proceedings are terminated if the proceedings were initiated within thirty days from the date of filing as defined in subsection (6) of this section except as follows:

(a) In the case of any permit issued to the state of Washington, department of transportation, for the construction and modification of SR 90 (I-90) on or adjacent to Lake Washington, the construction may begin after thirty days from the date of filing, and the permits are valid until December 31, 1995;

(b) If a permit is granted by the local government and (i) the granting of the permit is appealed to the shorelines hearings board within thirty days of the date of filing, (ii) the hearings board approves the granting of the permit by the local government or approves a portion of the substantial development for which the local government issued the permit, and (iii) an appeal for judicial review of the hearings board decision is filed pursuant to chapter 34.05 RCW, the permittee may request, within ten days of the filing of the appeal with the court, a hearing before the court to determine whether construction may begin pursuant to the permit approved by the hearings board or to a revised permit issued pursuant to the order of the hearings board. If, at the conclusion of the hearing, the court finds that construction pursuant to such a permit would not involve a significant, irreversible damaging of the environment, the court may allow the permittee to begin the construction pursuant to the approved or revised permit as the court deems appropriate. The court may require the permittee to post bonds, in the name of the local government that issued the permit, sufficient to remove the substantial development or to restore the environment if the permit is ultimately disapproved by the courts, or to alter the substantial development if the alteration is ultimately ordered by the courts. Construction pursuant to a permit revised at the direction of the hearings board may begin only on that portion of the substantial development for which the local government had originally issued the permit, and construction pursuant to such a revised permit on other portions of the substantial development may not begin until after all review proceedings are terminated. In such a hearing before the court, the burden of proving whether the construction may involve significant irreversible damage to the environment and demonstrating whether such construction would or would not be appropriate is on the appellant;

(c) If a permit is granted by the local government and the granting of the permit is appealed directly to the superior court for judicial review pursuant to the proviso in RCW 90.58.180(1), the permittee may request the court to remand the appeal to the shorelines hearings board, in which case the appeal shall be so remanded and construction pursuant to such a permit shall be governed by the provisions of subsection (b) of this subsection or may otherwise begin after review proceedings before the hearings board are terminated if judicial review is not thereafter requested pursuant to chapter 34.05 RCW;

(d) If the permit is for a substantial development meeting the requirements of subsection (13) of this section, construction pursuant to that permit may not begin or be authorized until thirty days from the date the final order was filed as provided in subsection (6) of this section.

If a permittee begins construction pursuant to subsections (a), (b), (c), or (d) of this subsection, the construction is begun at the permittee's own risk. If, as a result of judicial review, the courts order the removal of any portion of the construction or the restoration of any portion of the environment involved or require the alteration of any portion of a substantial development constructed pursuant to a permit, the permittee is barred from recovering damages or costs involved in adhering to such requirements from the local government that granted the permit, the hearings board, or any appellant or intervener.

(6) Any ruling on an application for a permit under the authority of this section, whether it is an approval or a denial, shall, concurrently with the transmittal of the ruling to the applicant, be filed with the department and the attorney general. With regard to a permit other than a permit governed by subsection (12) of this section, "date of filing" as used herein means the date of actual receipt by the department. With regard to a permit for a variance or a conditional use, "date of filing" means the date a decision of the department rendered on the permit pursuant to subsection (12) of this section is transmitted by the department to the local government. The department shall notify in writing the local government and the applicant of the date of filing.

(7) Applicants for permits under this section have the burden of proving that a proposed substantial development is consistent with the criteria that must be met before a permit is granted. In any review of the granting or denial of an application for a permit as provided in RCW 90.58.180 (1) and (2), the person requesting the review has the burden of proof.

(8) Any permit may, after a hearing with adequate notice to the permittee and the public, be rescinded by the issuing authority upon the finding that a permittee has not complied with conditions of a permit. If the department is of the opinion that noncompliance exists, the department shall provide written notice to the local government and the permittee. If the department is of the opinion that the noncompliance continues to exist thirty days after the date of the notice, and the local government has taken no action to rescind the permit, the department may petition the hearings board for a rescission of the permit upon written notice of the petition to the local government and the permittee if the request by the department is made to the hearings board within fifteen days of the termination of the thirty-day notice to the local government.

(9) The holder of a certification from the governor pursuant to chapter 80.50 RCW shall not be required to obtain a permit under this section.

(10) A permit shall not be required for any development on shorelines of the state included within a preliminary or final plat approved by the applicable state agency or local government before April 1, 1971, if:

(a) The final plat was approved after April 13, 1961, or the preliminary plat was approved after April 30, 1969; and

(b) The development is completed within two years after June 1, 1971.

(11) The applicable state agency or local government is authorized to approve a final plat with respect to shorelines of the state included within a preliminary plat approved after April 30, 1969, and before April 1, 1971: PROVIDED, That any substantial development within the platted shorelines of the state is authorized by a permit granted pursuant to this section, or does not require a permit as provided in subsection (10) of this section, or does not require a permit because of substantial development occurred before June 1, 1971.

(12) Any permit for a variance or a conditional use by local government under approved master programs must be submitted to the department for its approval or disapproval.

(13)(a) An application for a substantial development permit for a limited utility extension shall be subject to the following procedures:

(i) The public comment period under subsection (4) of this section shall be twenty days. The notice provided under subsection (4) of this section shall state the manner in which the public may obtain a copy of the local government decision on the application no later than two days following its issuance;

(ii) The local government shall issue its decision to grant or deny the permit within twenty-one days of the last day of the comment period specified in (i) of this subsection; and

(iii) If there is an appeal of the decision to grant or deny the permit to the local government legislative authority, the appeal shall be finally determined by the legislative authority within thirty days.

(b) For purposes of this section, a limited utility extension means the extension of a utility service that:

(i) Is categorically exempt under chapter 43.21C RCW for one or more of the following: Natural gas, electricity, telephone, water, or sewer;

(b) [ii] Will serve an existing use in compliance with this chapter; and

(c) [iii] Will not extend more than twenty-five hundred linear feet within the shorelines of the state. [1990 c 201 § 2; 1988 c 22 § 1; 1984 c 7 § 386; 1977 ex.s. c 358 § 1; 1975-'76 2nd ex.s. c 51 § 1; 1975 1st ex.s. c 182 § 3; 1973 2nd ex.s. c 19 § 1; 1971 ex.s. c 286 § 14.]

Finding—Intent—1990 c 201: "The legislature finds that delays in substantial development permit review for the extension of vital utility services to existing and lawful uses within the shorelines of the state have caused hardship upon existing residents without serving any of the purposes and policies of the shoreline management act. It is the intent of this act to provide a more expeditious permit review process for that limited category of utility extension activities only, while fully preserving safeguards of public review and appeal rights regarding permit applications and decisions." [1990 c 201 § 1.] "This act" consists of the 1990 c 201 amendments to RCW 90.58.140.

Severability—1984 c 7: See note following RCW 47.01.141.

Chapter 90.62

ENVIRONMENTAL COORDINATION PROCEDURES ACT

Sections

90.62.040 Master application for proposed project—Contents—Notice to state agencies—Agency permit

forms sent applicant—Return of forms to department with local government certification.

90.62.040 Master application for proposed project—Contents—Notice to state agencies—Agency permit forms sent applicant—Return of forms to department with local government certification. (1)

Any person proposing a project may submit a master application to the department requesting the issuance of all permits necessary prior to the construction and operation of the project in the state of Washington. The master application shall be on a form furnished by the department and shall contain precise information as to the location of the project, and shall describe the nature of the project including any discharges of wastes proposed therefrom and any uses of, or interferences with, natural resources contemplated.

(2) Upon receipt of a properly completed master application, the department shall immediately notify in writing each state agency having a possible interest in the master application arising from requirements pertaining to a permit program under its jurisdiction. The notification from the department shall be accompanied by a copy of the master application together with the date by which the agency shall respond to the notice. Each notified agency shall respond in writing to the department within the specified date, not exceeding fifteen days from receipt, as determined by the department, advising (a)(i) whether the agency does or does not have an interest in the master application, and (a)(ii) if the response to (a)(i) of this subsection is affirmative, the permit program or programs under the agency's jurisdiction to which the project described in the master application is pertinent, and whether, in relation to the master application, a public hearing as provided in RCW 90.62.050 and 90.62.060 would or would not be of value taking into consideration the overall public interest. Each notified state agency which (b)(i) responds within the specified date that it does not have an interest in the master application or (b)(ii) does not respond as required above within the specified date, shall not subsequently require a permit of the applicant for the project described in the master application; provided the bar to requiring a permit subsequently shall not be applicable if the master application provided the notified agency contained false, misleading, or deceptive information, or other information, or lack thereof, which would reasonably lead an agency to misjudge its interest in a master application.

(3) After receiving the information regarding permits and applications provided by the department under subsection (4) of this section, the person may continue the process to apply for all or some of the permits required for the project or choose not to use the process to apply for any permits.

(4) The department shall send application forms relating to permit programs identified in affirmative responses under subsection (2) of this section to the applicant within five working days of the date specified by the department pursuant to subsection (2) of this section with a direction to complete and return them to

the department within a reasonable time as specified by the department.

(5) When such applications, properly completed, have been returned to the department, each of the applications shall be transmitted to the appropriate state agency for the performance of its responsibilities of decision making in accordance with the procedures of this chapter. No such completed applications shall be accepted by the department for transmittal unless they are accompanied by (a) the certification of local government provided for in RCW 90.62.100 as now or hereafter amended, or (b) a statement of the local government indicating that such certification would require rezoning, the granting of a variance or issuance of a conditional use permit and the local government has chosen to utilize the procedures provided by this chapter to process the request for the rezoning or variance or the application for the conditional use permit as provided by RCW 90.62.100(2) as now or hereafter amended.

(6) For the purpose of establishing priority dates upon water right permits and certificates issued pursuant to rulings on applications under chapters 90.03 and 90.44 RCW and processed under this chapter, the priority date shall be the date of submitting the master application to the department or the county office as provided in RCW 90.62.120(2). [1990 c 137 § 1; 1977 c 54 § 3; 1973 1st ex.s. c 185 § 4.]

Chapter 90.70

PUGET SOUND WATER QUALITY AUTHORITY

Sections

90.70.011	Puget Sound water quality authority—Membership—Terms—Vacancies—Compensation.
90.70.045	Hiring of staff—Assignment of government employees to authority.
90.70.055	Water quality management plan—Progress reports—"State of the Sound" report—Budget and activities review.
90.70.060	Water quality management plan—Requirements—Record of public comments.
90.70.065	Puget Sound ambient monitoring program.
90.70.070	Water quality management plan—Incorporation by state and local governments—Review and report on implementation—Deviations from plan.
90.70.075	Water quality management plan—Notice in state register.
90.70.080	Adoption of rules, ordinances, and regulations.
90.70.090	Puget Sound Foundation.
90.70.100	Oil spill prevention and response responsibilities not duplicative of marine oversight board.
90.70.900	Repealed.
90.70.902	Implementation and requirements of plan not affected by repeal—1990 c 115.

Reviser's note—Sunset Act application: The Puget Sound water quality authority is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.369. RCW 90.70.001 through 90.70.060, 90.70.070, 90.70.080, and 90.70.901 are scheduled for future repeal under RCW 43.131.370.

90.70.011 Puget Sound water quality authority—Membership—Terms—Vacancies—Compensation. (1) There is established the Puget Sound water quality authority composed of eleven members. Nine

members shall be appointed by the governor and confirmed by the senate. In addition, the commissioner of public lands or the commissioner's designee and the director of ecology or the director's designee shall serve as ex officio members. Three of the members shall include a representative from the counties, a representative from the cities, and a tribal representative. The director of ecology shall be chair of the authority. In making these appointments, the governor shall seek to include representation of the variety of interested parties concerned about Puget Sound water quality. Of the appointed members, at least one shall be selected from each of the six congressional districts surrounding Puget Sound. Members shall serve four-year terms. Of the initial members appointed to the authority, two shall serve for two years, two shall serve for three years, and two shall serve for four years. Thereafter members shall be appointed to four-year terms. Members representing cities, counties, and the tribes shall also serve four-year staggered terms, as determined by the governor. Vacancies shall be filled by appointment for the remainder of the unexpired term of the position being vacated. The executive director of the authority shall be selected by the governor and shall serve at the pleasure of the governor. The executive director shall not be a member of the authority.

(2) Members shall be compensated as provided in RCW 43.03.250. Members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(3) The executive director of the authority shall be a full-time employee responsible for the administration of all functions of the authority, including hiring and terminating staff, contracting, coordinating with the governor, the legislature, and other state and local entities, and the delegation of responsibilities as deemed appropriate. The salary of the executive director shall be fixed by the governor, subject to RCW 43.03.040.

(4) The authority shall prepare a budget and a work plan.

(5) Not more than four employees of the authority may be exempt from the provisions of chapter 41.06 RCW.

(6) The executive director and staff of the authority shall be located in the Olympia area, as space becomes available. The department of general administration shall house the authority within the department of ecology. [1990 c 115 § 2; 1985 c 451 § 3.]

Sunset Act application: See note following chapter digest.

90.70.045 Hiring of staff—Assignment of government employees to authority. (1) The executive director shall hire staff for the authority. In so doing, the executive director shall recognize the many continuing planning and research activities concerning Puget Sound water quality and shall seek to acquire competent and knowledgeable staff from state, federal, and local government agencies and other agencies that are currently involved in these activities.

(2) As deemed appropriate, the executive director may request the state departments of ecology, community development, fisheries, wildlife, agriculture, natural resources, parks and recreation, and health to each assign at least one employee to the authority. The executive director shall enter into an interagency agreement with agencies assigning employees to the authority. Such agreement shall provide for reimbursement, by the authority to the assigning agency, of all work-related expenditures associated with the assignment of the employees. During the term of their assignment, the executive director has full authority and responsibility for the activities of these employees.

(3) The executive director shall seek assignment of appropriate federal and local government employees under available means. [1990 c 115 § 3; 1988 c 36 § 72; 1985 c 451 § 7.]

Sunset Act application: See note following chapter digest.

90.70.055 Water quality management plan—Progress reports—"State of the Sound" report—Budget and activities review. The authority shall:

(1) Prepare and adopt a comprehensive Puget Sound water quality management plan, as defined in RCW 90.70.060. In preparing the plan and any substantial revisions to the plan, the authority shall consult with its advisory committee or committees and appropriate federal, state, and local agencies. The authority shall also solicit extensive participation by the public by whatever means it finds appropriate, including public hearings throughout communities bordering or near Puget Sound, dissemination of information through the news media, public notices, and mailing lists, and the organization of workshops, conferences, and seminars;

(2) During the plan's initial development and any subsequent revisions, submit annual progress reports on plan revisions and implementation to the governor and the legislature.

(3) Submit the plan to the governor and the legislature no later than January 1, 1987. The authority shall review the plan at least every four years and revise the plan, as deemed appropriate, and shall submit the plan by July 1, 1994, and every four years thereafter;

(4) Prepare a biennial "state of the Sound" report and submit such report to the governor, the legislature, and the state agencies and local governments identified in the plan. Copies of the report shall be made available to the public. The report shall describe the current condition of water quality and related resources in Puget Sound and shall include:

(a) The status and condition of the resources of Puget Sound, including the results of ecological monitoring, including an assessment of the economic value of Puget Sound;

(b) Current and foreseeable trends in water quality of Puget Sound and the management of its resources;

(c) Review of significant public and private activities affecting Puget Sound and an assessment of whether such activities are consistent with the plan; and

(d) Recommendations to the governor, the legislature, and appropriate state and local agencies for actions

needed to remedy any deficiencies in current policies, plans, programs, or activities relating to the water quality of Puget Sound, and recommendations concerning changes necessary to protect and improve Puget Sound water quality; and

(5) Review the Puget Sound related budgets and regulatory and enforcement activities of state agencies with responsibilities for water quality and related resources in Puget Sound. [1990 c 115 § 4; 1985 c 451 § 4.]

Sunset Act application: See note following chapter digest.

90.70.060 Water quality management plan—Requirements—Record of public comments. The plan adopted by the authority shall be a positive document prescribing the needed actions for the maintenance and enhancement of Puget Sound water quality. The plan shall address all the waters of Puget Sound, the Strait of Juan de Fuca, and, to the extent that they affect water quality in Puget Sound, all waters flowing into Puget Sound, and adjacent lands. The authority may define specific geographic boundaries within which the plan applies. The plan shall coordinate and incorporate existing planning and research efforts of state agencies and local government related to Puget Sound, and shall avoid duplication of existing efforts. The plan shall include:

(1) A statement of the goals and objectives for long and short-term management of the water quality of Puget Sound;

(2) A resource assessment which identifies critically sensitive areas, key characteristics, and other factors which lead to an understanding of Puget Sound as an ecosystem;

(3) Demographic information and assessment as relates to future water quality impacts on Puget Sound;

(4) An identification and legal analysis of all existing laws governing actions of government entities which may affect water quality management of Puget Sound, the interrelationships of those laws, and the effect of those laws on implementation of the provisions of the plan;

(5) Review and assessment of existing criteria and guidelines for governmental activities affecting Puget Sound's resources, including shoreline resources, aquatic resources, associated watersheds, recreational resources and commercial resources;

(6) Identification of research needs and priorities;

(7) Recommendations for guidelines, standards, and timetables for protection and clean-up activities and the establishment of priorities for major clean-up investments and nonpoint source management, and the projected costs of such priorities;

(8) A procedure assuring local government initiated planning for Puget Sound water quality protection;

(9) Ways to better coordinate federal, state, and local planning and management activities affecting Puget Sound's water quality;

(10) Public involvement strategies, including household hazardous waste education, community clean-up efforts, and public participation in developing and implementing the plan;

(11) Recommendations on protecting, preserving and, where possible, restoring wetlands and wildlife habitat and shellfish beds throughout Puget Sound;

(12) Recommendations for a comprehensive water quality and sediment monitoring program;

(13) Analysis of current industrial pretreatment programs for toxic wastes, and procedures and enforcement measures needed to enhance them;

(14) Recommendations for a program of dredge spoil disposal, including interim measures for disposal and storage of dredge spoil material from or into Puget Sound;

(15) Definition of major public actions subject to review and comment by the authority because of a significant impact on Puget Sound water quality and related resources, and development of criteria for review thereof;

(16) Recommendations for implementation mechanisms to be used by state and local government agencies;

(17) Standards and procedures for reporting progress by state and local governments in the implementation of the plan;

(18) An analysis of resource requirements and funding mechanisms for updating of the plan and plan implementation; and

(19) Legislation needed to assure plan implementation.

The authority shall circulate and receive comments on drafts of the plan mandated herein, and keep a record of all relevant comments made at public hearings and in writing. These records should be made easily available to interested persons.

As part of the plan, the authority shall prepare a strategy for implementing the plan that includes, but is not limited to: (a) Setting priorities for implementation of plan elements to facilitate executive and legislative decision making; (b) assessment of the capabilities and constraints, both internal and external to state and local government, that may affect plan implementation; and (c) an analysis of the strategic options in light of the resources available to the state. In developing this strategy, the authority shall consult and coordinate with other related environmental planning efforts. [1990 c 115 § 5; 1989 c 11 § 31; 1985 c 451 § 8.]

Sunset Act application: See note following chapter digest.

Severability—1989 c 11: See note following RCW 9A.56.220.

90.70.065 Puget Sound ambient monitoring program.

(1) In addition to other powers and duties specified in this chapter, the authority shall ensure implementation of the Puget Sound ambient monitoring program established in the plan under RCW 90.70.060(12). The program shall:

(a) Develop a baseline and examine differences among areas of Puget Sound, for environmental conditions, natural resources, and contaminants in seafood, against which future changes can be measured;

(b) Take measurements relating to specific program elements identified in the plan;

(c) Measure the progress of the ambient monitoring programs implemented under the plan;

(d) Provide a permanent record of significant natural and human-caused changes in key environmental indicators in Puget Sound; and

(e) Help support research on Puget Sound.

(2) To ensure proper coordination of the ambient monitoring program, the authority may establish an interagency coordinating committee consisting of representatives from the departments of ecology, fisheries, natural resources, wildlife, and health, and such federal, local, tribal, and other organizations as are necessary to implement the program.

(3) Each state agency with responsibilities for implementing the Puget Sound ambient monitoring program, as specified in the plan, shall participate in the program. [1990 c 115 § 9.]

90.70.070 Water quality management plan—Incorporation by state and local governments—Review and report on implementation—Deviations from plan.

(1) In conducting planning, regulatory, and appeals actions, the state agencies and local governments identified in the plan must evaluate, and incorporate as applicable, subject to the availability of appropriated funds or other funding sources, the provisions of the plan, including any guidelines, standards, and timetables contained in the plan.

(2) The authority shall review the progress of state agencies and local governments regarding the timely implementation of the plan. Where prescribed actions have not been accomplished in accordance with the plan, the responsible state agencies and local governments shall, at the request of the authority, submit written explanations for the shortfalls, together with their proposed remedies, to the authority.

The results of the review and a description of the actions necessary to comply with the plan shall be included in the biennial state of the Sound report.

(3) The state agencies and local governments identified in the plan shall review their activities biennially and document their consistency with the plan. They shall submit written reports or updates of their findings to the authority.

(4) The authority shall review the major actions affected by the plan being considered by the state agencies and local governments and shall comment in a timely manner regarding consistency with the plan and may participate in administrative and subsequent judicial proceedings with respect to such actions. Any deviations from the plan, identified by the authority, shall be transmitted in writing by the authority to the responsible state agency or local government. [1990 c 115 § 6; 1985 c 451 § 9.]

Sunset Act application: See note following chapter digest.

90.70.075 Water quality management plan—Notice in state register. (1) At least twenty days before public hearings commence regarding a proposal to adopt or revise the plan or any portion of it, the authority shall cause to be published in the state register the following information:

(a) A summary of the proposal;

(b) The personnel, with their office location and telephone numbers, who are responsible for the drafting of the proposal; and

(c) When, where, and how persons may present their views on the proposal.

(2) The authority may not adopt any portion of the plan that is substantially different from the version of the plan that was summarized in the state register under subsection (1) of this section, unless a supplemental notice is published in the state register reopening public comment on the proposed variance. The following factors shall be considered in determining whether an adopted portion of the plan is substantially different from the summarized version:

(a) The extent to which a reasonable person affected by the adopted plan would have understood that the summarized version would affect his or her interests;

(b) The extent to which the subject of the adopted plan or the issues determined in it are substantially different from the subject or issues involved in the summarized version; and

(c) The extent to which the effects of the adopted plan differ from the effects of the summarized version. [1990 c 115 § 10.]

90.70.080 Adoption of rules, ordinances, and regulations. (1) To implement this chapter, state agencies are authorized to adopt rules that are applicable to actions and activities on a less than state-wide geographic basis. State agencies are encouraged to adopt rules that protect Puget Sound water quality before the adoption of the plan by the authority.

(2) A rule to implement an element of the plan that applies on a less than state-wide basis shall contain a statement defining the geographic area to which it applies. In determining whether to adopt rules on a state-wide or less than state-wide basis, state agencies shall consider at least the following factors:

(a) Number and location of primary affected persons;

(b) Geographical distribution of the actions and activities;

(c) Equity among regulated and nonregulated persons;

(d) Difficulty and practicality of implementation, including the effects on existing agency programs;

(e) Expected environmental benefits;

(f) Availability of information related to the actions and activities; and

(g) Requirements of other state or federal laws, rules, and policies.

When a state agency proposes to adopt a rule applicable beyond the Puget Sound area, and that rule was originally proposed to implement an element of the plan, the state agency shall ensure that early and meaningful participation by interested members of the public is provided from all geographic areas to which the rule will be applicable.

(3) To implement this chapter, counties, cities, and towns are authorized to adopt ordinances, rules, and regulations that are applicable on less than a county-wide, city-wide, or town-wide basis. Counties, cities, and towns are encouraged to adopt ordinances, rules,

and regulations that protect Puget Sound water quality before the adoption of the plan by the authority. [1990 c 115 § 7; 1985 c 451 § 10.]

Sunset Act application: See note following chapter digest.

90.70.090 Puget Sound Foundation. In addition to other powers and duties specified in this chapter, the authority may form a public nonprofit corporation in the same manner as a private nonprofit corporation is formed under chapter 24.03 RCW, the Washington nonprofit corporation act. The public corporation shall be an instrumentality of the state and have all the powers and be subject to the same restrictions as are permitted or prescribed to private nonprofit corporations but shall exercise these powers only for carrying out the purposes of this section. However, the public nonprofit corporation shall not borrow money or incur any indebtedness. The public corporation shall be known as the Puget Sound Foundation. The purposes of the foundation shall be to:

(1) Receive, disburse, and administer gifts, grants, endowments, or other funds from any source that support a comprehensive and coordinated program of research and education activities connected with Puget Sound water quality, consistent with the purposes of this chapter;

(2) Promote the coordination and support of research and education activities that address the cumulative effects of decisions on the Puget Sound ecosystem;

(3) Assist in making the results of research available and useful to the decision-making process; and

(4) Host an annual meeting, to be known as the Puget Sound summit, assembling state agencies, local governments, tribes, the public, and private businesses for the purposes of improving understanding about the obstacles to plan implementation, enhancing cooperation, and expediting Puget Sound cleanup. [1990 c 115 § 8.]

90.70.100 Oil spill prevention and response responsibilities not duplicative of marine oversight board. Authority recommendations for oil spill prevention and response shall not be duplicative of those responsibilities given to the marine oversight board under RCW 90.56.450. The authority may incorporate the findings and recommendations of the marine oversight board into the plan or revisions of the plan submitted to the United States environmental protection agency pursuant to the federal clean water act, 33 U.S.C. Sec. 1330. [1991 c 200 § 502.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

90.70.900 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

90.70.902 Implementation and requirements of plan not affected by repeal—1990 c 115. Nothing in RCW 43.131.370 shall affect the implementation and requirements of the Puget Sound water quality management plan existing on June 30, 1995, or such other effective

date of repeal of the laws referenced in RCW 43.131.370. The implementation of the plan on and after that date shall be the responsibility of such entities as are provided by the legislature. [1990 c 115 § 13.]

Chapter 90.76

UNDERGROUND STORAGE TANKS

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90.76.100 Underground storage tank account.
90.76.110 Preemption.

90.76.100 Underground storage tank account. The underground storage tank account is created in the state treasury. Money in the account may only be spent, subject to legislative appropriation, for the administration and enforcement of the underground storage tank program established under this chapter. The account shall contain:

- (1) All fees collected under RCW 90.76.090; and
- (2) All fines or penalties collected under RCW 90.76-.080. [1991 1st sp.s. c 13 § 72; 1989 c 346 § 11.]

Effective dates—Severability—1991 1st sp.s. c 13: See notes following RCW 70.39.170.

90.76.110 Preemption. (1) Except as provided in RCW 90.76.040 and subsections (2), (3), (4), and (5) of this section, the rules adopted under this chapter supersede and preempt any state or local underground storage tank law, ordinance, or resolution governing any aspect of regulation covered by the rules adopted under this chapter.

(2) Provisions of the uniform fire code adopted under chapter 19.27 RCW, which are not more stringent than, and do not directly conflict with, rules adopted under this chapter are not superseded or preempted.

(3) Local laws, ordinances, and resolutions pertaining to local authority to take immediate action in response to a release of a regulated substance are not superseded or preempted.

(4) City, town, or county underground storage tank ordinances that are more stringent than the federal regulations and the uniform codes adopted under chapter 19.27 RCW and that are in effect on November 1, 1988, are not superseded or preempted. A city, town, or county with an ordinance that meets these criteria shall notify the department of the existence of that ordinance by July 1, 1989.

(5) Local laws, ordinances, and resolutions pertaining to permits and fees for the use of underground storage tanks in street right of ways that were in existence prior to July 1, 1990, are not superseded or preempted. [1991 c 83 § 1; 1989 c 346 § 12.]



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COMMON CARRIERS

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PROBATION AND PAROLE

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